NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 168 August 30, 2016

Pages 59421–59826

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800** **(Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register
Vol. 81, No. 168
Tuesday, August 30, 2016

Agricultural Marketing Service

RULES
Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order:
  Revision of Time Frame for Continuance Referenda, 59425–59427
PROPOSED RULES
National Organic Program:
  Interim Instruction on Material Review, 59521–59522

Agriculture Department

See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Alcohol and Tobacco Tax and Trade Bureau

RULES
Reclassification of Specially Denatured Spirits and Completely Denatured Alcohol Formulas and Related Amendments, 59445–59464

Animal and Plant Health Inspection Service

RULES
Viruses, Serums, Toxins, and Analogous Products:
  Packaging and Labeling, 59427–59436
PROPOSED RULES
Importation of Fresh Persimmon with Calyxes from Japan into the United States, 59522–59526

Centers for Disease Control and Prevention

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59627–59631
Meetings:
  Advisory Committee to the Director, 59626
  Compliance with Federal Select Agent Program; Multi–Agency Informational Meeting; Public Webcasts, 59631–59632
Requests for Nominations:
  Advisory Committee on Breast Cancer in Young Women, 59627

Children and Families Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  State Abstinence Education Program, 59632–59633

Civil Rights Commission

NOTICES
Meetings:
  Connecticut Advisory Committee, 59602
  Michigan Advisory Committee, 59600–59601
  New York Advisory Committee, 59601
  Vermont Advisory Committee, 59601–59602

Coast Guard

RULES
Safety Zones:
  Caribbean Fantasy, Vessel on Fire, Punta Salinas, Toa Baja, PR, 59484–59486
  Chesapeake Bay, Hampton, VA, 59480–59482
  Delaware River, Philadelphia, PA, 59479
  Dredging, Shark River, NJ, 59482–59484
Special Local Regulations:
  Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC, 59477–59479
NOTICES
Meetings:
  Chemical Transportation Advisory Committee; Correction, 59644

Commerce Department

See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

PROPOSED RULES
Whistleblower Awards Process, 59551–59581

Council of the Inspectors General on Integrity and Efficiency

NOTICES
Senior Executive Service Performance Review Board Membership, 59605–59608

Defense Acquisition Regulations System

RULES
Defense Federal Acquisition Regulation Supplements:
  Costs Related to Counterfeit Electronic Parts, 59510–59515
  Instructions for Wide Area WorkFlow Reparable Receiving Report, 59515–59517
  Request for Audit Services in France, Germany, Netherlands, or United Kingdom, 59510
PROPOSED RULES
Defense Federal Acquisition Regulation Supplements:
  Pilot Program for Streamlining Awards for Innovative Technology Projects, 59594–59596

Defense Department

See Defense Acquisition Regulations System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59611–59613
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Report of Shipment, 59624–59625
Meetings:
  Government-Industry Advisory Panel, 59612–59613
  Reserve Forces Policy Board, 59610–59611
  Threat Reduction Advisory Committee, 59609–59610
  Uniform Formulary Beneficiary Advisory Panel, 59609

Drug Enforcement Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  National Drug Threat Survey, 59656–59657

Employee Benefits Security Administration

RULES
Savings Arrangements Established by States for Non-Governmental Employees, 59464–59477
PROPOSED RULES
Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 59581–59592

Energy Department

See Federal Energy Regulatory Commission
RULES
Applications and Authorizations for the In-Transit Movement of Natural Gas:
  Revised Procedures, 59436–59437
PROPOSED RULES
Energy Conservation Programs for Consumer Products and Certain Commercial and Industrial Equipment:
  Test Procedures for Consumer and Commercial Water Heaters, 59736–59798
NOTICES
Meetings:
  Environmental Management Advisory Board, 59613–59614
  Environmental Management Site-Specific Advisory Board, Portsmouth; Cancellation, 59614

Environmental Protection Agency

RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Kentucky; Source Specific Revision for Louisville Gas and Electric, 59488–59490
  Maryland; Control of Emissions from Various Processes and Fuel-Burning Equipment from Kraft Pulp Mills, 59486–59488
  Reno, Nevada; Second 10-Year Carbon Monoxide Maintenance Plan, 59490–59499
Hazardous Waste Management System:
  Final Authorization of State Hazardous Waste Management Program Revisions; Maryland, 59503–59510
Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources, 59800–59826
Tolerance Exemptions:
  Citrus tristeza virus expressing spinach defensin proteins 2, 7, and 8, 59499–59503
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  Reno, Nevada; Second 10-Year Carbon Monoxide Maintenance Plan, 59593–59594
Hazardous Waste Management System Revisions:
  Maryland; Final Authorization, 59594
NOTICES
Meetings:
  Mobile Sources Technical Review Subcommittee, 59622
Requests for Nominations:
  Science Advisory Board Ecological Processes and Effects Committee; Experts to Provide Advice on Methods for Deriving Water Quality Criteria for the Protection of Aquatic Life, 59621–59622

Farm Credit System Insurance Corporation

RULES
Releasing Information; Availability of Records of Farm Credit System Insurance Corporation; Fees for Provision of Information, 59437–59438

Federal Aviation Administration

RULES
Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations:
  Technical Amendment, 59440
Licensing and Safety Requirements for Launch, 59438–59439
PROPOSED RULES
Airworthiness Directives:
  Airbus Airplanes, 59530–59532, 59535–59539, 59546–59548
  Bombardier, Inc. Airplanes, 59539–59540
  Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes, 59528–59530
  Sikorsky Aircraft Corporation Helicopters, 59526–59528
  The Boeing Company Airplanes, 59532–59535, 59541–59546, 59548–59551
NOTICES
Meetings:
  Commercial Space Transportation Advisory Committee; Public Teleconference, 59712–59713
Noise Exposure Maps:
  Baltimore/Washington International Thurgood Marshall Airport, Anne Arundel County, MD, 59714–59715
Petitions for Exemption; Summaries:
  Fusion Flight, LLC, 59713
Waivers of Aeronautical Land-Use Assurance:
  Marshall Memorial Municipal Airport, Marshall, MO, 59713–59714

Federal Communications Commission

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59622–59623
Meetings:
  Disability Advisory Committee, 59623–59624

Federal Deposit Insurance Corporation

NOTICES
Terminations of Receiverships:
  GreenChoice Bank, FSB Chicago, IL, 59624

Federal Energy Regulatory Commission

NOTICES
Combined Filings, 59614–59615, 59617
Environmental Assessments; Availability, etc.:
  Gulf South Pipeline Co., LP; St. Charles Parish Expansion Project, 59615–59617
Environmental Impact Statements; Availability, etc.:
  Transcontinental Gas Pipe Line Co., LLC; Northeast Supply Enhancement Project, 59618–59620
Filings:
  C.P. Crane, LLC, 59620–59621
Staff Attendances, 59617

Federal Highway Administration

NOTICES
Assumption of Authorities, 59715–59717
Productive and Timely Expenditure of Funds, 59717–59718

Federal Motor Carrier Safety Administration

NOTICES
Qualification of Drivers; Exemption Applications:
  Diabetes Mellitus, 59718–59729

Federal Railroad Administration

NOTICES
Applications for Approval of Discontinuance or Modification of a Railroad Signal System, 59730
Compliance Waivers; Petitions:
  Delaware Coast Line Railroad, 59729
  Nevada Northern Railway, 59730–59731

Federal Reserve System

NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 59624

Fish and Wildlife Service

NOTICES
Endangered and Threatened Wildlife and Plants:
  5-Year Status Reviews of 22 Southeastern Species, 59650–59652

Food and Drug Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Hazard Analysis and Critical Control Point Procedures for Safe and Sanitary Processing and Importing of Juice, 59636–59638
Guidance:
  Bioequivalence Recommendations for Risperidone, 59633–59634
  Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices, 59638–59639
  Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods, 59640–59641
Meetings:
  Antimicrobial Drugs Advisory Committee, 59639–59640
  Small Business and Industry Assistance Regulatory Education for Industry Fall Conference, 59635–59636
  Vaccines and Related Biological Products Advisory Committee, 59634–59635

Foreign-Trade Zones Board

NOTICES
Applications for Subzone Status:
  Givaudan Flavors Corp., East Hanover, NJ, 59602–59603
Production Activities:
  Foreign-Trade Zone 26, Atlanta, GA; Eastman Kodak Co. (Aluminum Printing Plates) Columbus, Georgia, Subzone 26N, Columbus, GA, 59603
  Foreign-Trade Zone 76, Bridgeport, CT; ASML US, Inc. (Optical, Metrology, and Lithography System Modules), Newtown and Wilton, CT, 59603

Forest Service

NOTICES
Meetings:
  Ketchikan Resource Advisory Committee, 59597

General Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Report of Shipment, 59624–59625

Grain Inspection, Packers and Stockyards Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59597–59598
Designations to Provide Services, 59598–59599

Gulf Coast Ecosystem Restoration Council

NOTICES
Initial Funded Priorities List, 59625–59626

Health and Human Services Department

See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Findings of Research Misconduct, 59642–59643

Health Resources and Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Stem Cell Therapeutic Outcomes Database, 59641–59642

Homeland Security Department

See Coast Guard
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Community Compass TA and Capacity Building Program NOFA, 59649–59650
  Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units, 59646–59647
  Ginnie Mae Multiclass Securities Program Documents Forms and Electronic Data Submissions, 59647–59649
  Multifamily Default Status Report, 59647

Indian Affairs Bureau

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Bureau of Indian Education Medication Authorization and Incident Report Forms, 59653–59654
  Grazing Permits, 59652

Interior Department

See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration

NOTICES
Determination of Sales at Less than Fair Value:
  Certain Oil Country Tubular Goods from Republic of Korea, 59603–59604

International Trade Commission

NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
  Certain Activity Tracking Devices, Systems, and Components Thereof, 59655–59656
Meetings; Sunshine Act, 59656

Justice Department

See Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Requirement that Movie Theaters Provide Notice as to Availability of Closed Movie Captioning and Audio Description, 59657–59658

Labor Department

See Employee Benefits Security Administration

Land Management Bureau

NOTICES
Public Land Orders:
  Wyoming, National Forest System Land for Burgess Junction Visitor Center and Administrative Site; Withdrawal, 59654
  Wyoming; National Forest System Land for Medicine Wheel/Medicine Mountain National Historic Landmark, Withdrawal, 59654–59655

Maritime Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59731
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Information to Determine Seamen's Reemployment Rights: National Emergency, 59732
Requests for Administrative Waivers of the Coastwise Trade Laws:
  Vessel AFTER HOURS, 59731–59732

Millennium Challenge Corporation

RULES
Collection of Debts, 59440–59445

National Aeronautics and Space Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Report of Shipment, 59624–59625

National Institute of Standards and Technology

NOTICES
Meetings:
  Manufacturing Extension Partnership Advisory Board, 59604–59605

National Institutes of Health

NOTICES
Meetings:
  Diabetes Mellitus Interagency Coordinating Committee, 59643
  National Institute of Mental Health, 59643–59644
  National Institute on Aging, 59643–59644

National Oceanic and Atmospheric Administration

RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
  Blueline Tilefish in the South Atlantic Region; Commercial Accountability Measures and Closure, 59517

Nuclear Regulatory Commission

NOTICES
Exemptions:
  Exelon Generation Co., LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Update Schedule for Updated Final Safety Analysis Report, 59670–59672
Facility Operating and Combined Licenses:
  Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 59659–59669
License Amendment Applications:
  Omaha Public Power District; Fort Calhoun Station, Unit No. 1, 59669–59670
Meetings; Sunshine Act, 59659
Requests for Nominations:
  Advisory Committee on Medical Uses of Isotopes, 59658

Personnel Management Office

PROPOSED RULES
Federal Employees Health Benefits Program:
  FEHB Employee Premium Contributions for Employees in Leave Without Pay or Other Nonpay Status, 59518–59521

Pipeline and Hazardous Materials Safety Administration

NOTICES
Hazardous Materials:
  Actions on Special Permit Applications, 59732–59733

Postal Regulatory Commission

PROPOSED RULES
Periodic Reporting, 59592–59593

Presidential Documents

PROCLAMATIONS
Special Observances:
  Women's Equality Day (Proc. 9477), 59421–59423

Rural Utilities Service

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59599–59600

Securities and Exchange Commission

NOTICES
Applications:
  Calvert Social Investment Fund, et al., 59688–59693
  iShares Trust, et al., 59710–59711
Meetings; Sunshine Act, 59698
Self-Regulatory Organizations; Proposed Rule Changes:
  Bats BZX Exchange, Inc., 59700–59709
  BOX Options Exchange, LLC, 59696
  Financial Industry Regulatory Authority, Inc., 59676–59677
  NASDAQ BX, Inc., 59672–59674
  NASDAQ PHLX, LLC, 59693–59696
  New York Stock Exchange, LLC, 59678–59688, 59699–59700
  NYSE Arca, Inc., 59674–59676, 59711
  NYSE MKT, LLC, 59696–59698

Trading Suspension Orders:
  MarilynJean Interactive, Inc., 59674

Small Business Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59712

Surface Transportation Board

NOTICES

Meetings:
  National Grain Car Council, 59712

Transportation Department

See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 59733
Multiemployer Pension Plan Application To Reduce Benefits, 59733–59734

U.S. Citizenship and Immigration Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Application for Travel Document, 59645–59646

U.S. Customs and Border Protection

NOTICES

Automated Commercial Environments:
  Sole CBP-Authorized Electronic Data Interchange System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings, 59644–59645

Separate Parts In This Issue

Part II

Energy Department, 59736–59798

Part III

Environmental Protection Agency, 59800–59826

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

9477.....59421

5 CFR

Proposed Rules:

890.....59518

7 CFR

1217.....59425

Proposed Rules:

205.....59521
319.....59522

9 CFR

101.....59427
103.....59427
112.....59427
113.....59427
114.....59427

10 CFR

590.....59436

Proposed Rules:

429.....59736
430.....59736
431.....59736

12 CFR

1402.....59437

14 CFR

415.....59438
417.....59438
431.....59440

Proposed Rules:

39 (11 documents) 59526, 59528, 59530, 59532, 59535, 59539, 59541, 59544, 59546, 59548, 59549

17 CFR

Proposed Rules:

165.....59551

22 CFR

1306.....59440

27 CFR

19.....59445
20.....59445
21.....59445
27.....59445
28.....59445

29 CFR

2510.....59464

Proposed Rules:

2510.....59581

33 CFR

100.....59477
165 (4 documents) 59479, 59480, 59482, 59484

39 CFR

Proposed Rules:

3050 (2 documents) 59592, 59593

40 CFR

51.....59800
52 (3 documents) 59486, 59488, 59490
60.....59800
61.....59800
63.....59800
180.....59499
271.....59503

Proposed Rules:

52.....58593
271.....59594

48 CFR

Ch. 2.....59515
225.....59510
231.....59510

Proposed Rules:

215.....59594
219.....59594
235.....59594

50 CFR

622.....59517

Federal Register
Vol. 81, No. 168
Tuesday, August 30, 2016

Presidential Documents

Title 3—

The President

Proclamation 9477 of August 25, 2016

Women's Equality Day, 2016

By the President of the United States of America

A Proclamation

Nearly one century ago, with boundless courage and relentless commitment, dedicated women who had marched, advocated, and organized for the right to cast a vote finally saw their efforts rewarded on August 26, 1920, when the 19th Amendment was certified and the right to vote was secured. In the decades that followed, that precious right has bolstered generations of women and empowered them to stand up, speak out, and steer the country they love in a more equal direction. Today, as we celebrate the anniversary of this hard-won achievement and pay tribute to the trailblazers and suffragists who moved us closer to a more just and prosperous future, we resolve to protect this constitutional right and pledge to continue fighting for equality for women and girls.

At every level of society, women are leaders at the forefront of progress. Serving as judges and Members of Congress, setting world records in sports, founding groundbreaking companies, and fighting on the front lines of combat, women continue to tear down barriers and shatter glass ceilings—just as they have done since the founding of our Nation. Yet such progress is not inevitable, and we must keep moving forward on our journey toward equality. In one of my first acts as President, I established the White House Council on Women and Girls to provide a coordinated response to challenges confronted by women and girls, ensuring their concerns and insights are taken into account in our policies and programs. And this year, my Administration hosted the first-ever United State of Women Summit to continue our efforts to underscore the passion, success, and ongoing commitment of advocates dedicated to advancing gender equality and realizing a brighter future for women of all ages.

No woman should earn less than a man for doing the same job—equal pay for equal work should be a fundamental principle of our economy and our democracy. That is why the first bill I signed into law as President was the Lilly Ledbetter Fair Pay Act, and why I continue to call on the Congress to pass the Paycheck Fairness Act. Women make up roughly half of our workforce, and we need to invest more in affordable, high-quality childcare. We must strengthen paid sick, maternity, and family leave—too many families are forced to make difficult choices between caring for a newborn and receiving a paycheck, or staying home to help a sick child or parent and keeping their job. And we must continue striving for fairness and opportunity when it comes to improving workplace policies, because we know that when women succeed, our economy and our country succeed.

Ensuring all young women can live full and healthy lives is vital to their pursuit of personal and professional goals. Because of the Affordable Care Act, individuals can no longer be charged higher premiums simply for being a woman. But there is still more we can do to reduce discrimination when it comes to women's health—such as protecting a woman's right to choose and safeguarding access to sexual and reproductive health services, including abortion. Every person should be able to live and reach for their dreams free from fear of violence: In America, nearly one in four women has suffered physical domestic violence, a cruelty which deprives its victims of their autonomy, liberty, and security, and inhibits them from reaching their full potential. Approximately one in five women is sexually assaulted while in college. Through the It's On Us campaign and the White House Task Force to Protect Students From Sexual Assault, we have called on individuals, communities, and institutions of higher education to recognize what they can do to stop sexual assault and change our culture for the better. We have striven to support survivors and focused on making sure our schools are safe places where all students can learn, grow, and thrive. Transgender women often face escalated levels of discrimination and violence, and we have taken a number of steps to secure their civil rights, including providing guidance to educators that can help rid school environments of discrimination. The Department of Justice has also urged law enforcement agencies to address any form of gender bias that exists in responding to domestic violence and sexual assault and ensure that such bias does not undermine efforts to keep victims safe.

Underrepresented in management positions, underfunded as entrepreneurs, under-encouraged in STEM fields, and confronted with higher levels of unemployment, women and girls of color still face very real challenges, significant opportunity gaps, and structural barriers. That is why we have hosted forums to discuss ways to increase programming and promote opportunities for women and girls of color so they can achieve success at school, at work, and in their communities. To continue building these ladders of opportunity for women—not just in communities across our country, but also around the world—I have made advancing gender equality a foreign policy priority. My Administration has sought to end gender-based violence across the globe, promote the role of women in ending conflict and building lasting peace and security, and empower the next generation by investing in adolescent girls and breaking down barriers to get 62 million girls into schools through the *Let Girls Learn* initiative.

In the many decades since suffragists organized and mobilized, countless advocates and leaders have picked up the mantle and moved our Nation and our world forward. Today, young women in America grow up knowing an historic truth—that not only can they cast a vote, but they can also run for office and help shape the very democracy that once left them out. For these women, and for generations of women to come, we must keep building a more equal America—whether through the stories we tell about our Nation's history or the faces we display on our country's currency. On Women's Equality Day, as we recognize the accomplishments that so many women fought so hard to achieve, we rededicate ourselves to tackling the challenges that remain and expanding opportunity for women and girls everywhere.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 26, 2016, as Women's Equality Day. I call upon the people of the United States to celebrate the achievements of women and promote gender equality.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–20949
Filed 8–29–16; 8:45 am]
Billing code 3295–F6–P

Rules and Regulations

Federal Register
Vol. 81, No. 168
Tuesday, August 30, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS–SC–16–0054]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Revision of Time Frame for Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule invites comments on revising the time frame for continuance referenda under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). The Order is administered by the Softwood Lumber Board (Board) with oversight by the U.S. Department of Agriculture (USDA). The Order requires USDA to conduct a continuance referendum five years after the program took effect (2011). This action revises this time frame from five years (2016) to no later than seven years (2018). This will allow time for USDA to complete a separate rulemaking action on the Order's exemption threshold. That rulemaking is being initiated in response to a federal district court decision in *Resolute Forest Products Inc.*, v. *USDA, et al.* (*Resolute*). Once USDA completes that action, a continuance referendum will be conducted. The results of the exemption threshold rulemaking could impact who votes in the referendum and who pays assessments under the Order.

DATES: Effective August 31, 2016. Comments received by October 31, 2016 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This interim rule is issued under the Order (7 CFR part 1217). The Order is authorized under the Commodity Promotion, Research and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This interim rule invites comments on revising the time frame for continuance referenda under the Order. The Order is administered by the Board with oversight by USDA. The Order requires USDA to conduct a continuance referendum five years after the program took effect (2011). This action revises this time frame from five years (2016) to no later than seven years (2018). This will allow time for USDA to complete a separate rulemaking action on the Order's exemption threshold. That rulemaking is being initiated in response to a federal district court decision in *Resolute.* Once USDA completes that action, a referendum will be conducted. The results of that rulemaking could impact who votes in the referendum and who pays assessments under the program.

The softwood lumber program was promulgated in 2011. Assessment collection began in January 2012. Under the Order, assessments are collected from U.S. manufacturers (domestic) and importers and used for projects designed to increase the demand for softwood lumber within the United States. Softwood lumber is used in products like flooring, siding and framing. Entities that domestically ship or import less than 15 million board feet annually are exempt from paying assessments.

Authorities and Action

Section 518 of the 1996 Act (7 U.S.C. 7417) authorizes continuance referenda. Paragraph (b) of that section requires USDA to conduct a referendum not later than seven years after assessments first begin under an order. Under § 1217.81(b)(2) of the softwood lumber Order, USDA must conduct a referendum five years after the program took effect to determine whether persons subject to assessment favor continuance of the Order, and then every five years thereafter. A referendum was initially scheduled for August 2016.

USDA is conducting an analysis on the 15 million board foot exemption threshold under the Order, as specified in paragraphs (a) and (b) of section 1217.53. USDA is analyzing this threshold based on recent data and will publish the results of its analysis for public comment in a future rulemaking action. Once this rulemaking is completed, USDA will conduct a referendum. The results of that rulemaking could impact who votes in the referendum and who pays assessments under the program.

USDA will be initiating the future rulemaking action on the Order's exemption threshold in response to a May 2016 federal district court decision in *Resolute.* All program obligations, including the collection of assessments and filing of reports, remain in effect.

Therefore, USDA has postponed the August 2016 referendum and is revising paragraph (2) in section 1217.81(b) to specify that a referendum must be conducted no later than seven years (2018) after the program took effect. This will allow time for USDA to complete the rulemaking action on the exemption threshold under the program and conduct a referendum. Section 1217.81(b)(2) is revised accordingly. Authority for USDA to amend the Order is provided in section 1217.87 of the Order and in section 514(d) of the 1996 Act (7 U.S.C. 7413).

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the interim rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than $7.5 million.

Based on 2015 Board data, it is estimated that there are about 375 domestic manufacturers of softwood lumber in the United States. Using an average price of $330 per thousand board feet,[1] a domestic manufacturer who ships less than about 23 million board feet per year would be considered a small entity. It is estimated that fewer than 240 domestic manufacturers, or 64 percent, ship under 23 million board feet annually.

Likewise, based on 2015 U.S. Customs and Border Protection (Customs) data, it is estimated there are 890 importers of softwood lumber. About 790 importers, or 89 percent, each imported less than $7.5 million worth of softwood lumber annually. Thus, for purposes of the RFA, the majority of domestic manufacturers and importers of softwood lumber would be considered small entities.

Regarding value of the commodity, with domestic consumption estimated at 43.9 billion board feet in 2015,[2] and using a price of $330 per thousand board feet, the annual domestic value for softwood lumber is about $14.5 billion. According to 2015 Customs data, the annual value for softwood lumber imports is about $5.0 billion.

This interim rule invites comments on revising the time frame for continuance referenda under the Order. The Order is administered by the Board with oversight by USDA. Section 1217.81(b)(2) of the Order requires USDA to conduct a continuance referendum five years after the program took effect (2011). This action revises this section to change the time frame from five years (2016) to no later than seven years (2018). This will allow time for USDA to complete a separate rulemaking action on the Order's exemption threshold. That rulemaking is being initiated in response to a federal district court decision in *Resolute.* Once USDA completes that action, a referendum will be conducted. The results of that rulemaking could impact who votes in the referendum and who pays assessments under the program. Authority for this action is provided in section 1217.87 of the Order and in section 514(d) of the 1996 Act (7 U.S.C. 7413).

Regarding the economic impact of this interim rule, this change is administrative in nature. Postponing the 2016 referendum will allow time for USDA to complete a separate rulemaking action on the Order's exemption threshold and conduct a referendum as described above. The results of that rulemaking could impact who votes in the referendum and who pays assessments under the program.

Regarding alternatives, conducting the referendum as initially planned in 2016 would cause confusion in the industry. USDA is currently conducting an analysis on the exemption threshold under the Order and will publish the results in a separate rulemaking action. That action is being initiated in response to *Resolute.* Once USDA completes that action, a referendum will be conducted. The results of that rulemaking action could impact who votes in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This interim rule imposes no additional reporting and recordkeeping burden on domestic manufacturer and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this interim rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

---

[1] Price data was obtained from Random Lengths Publications, Inc., and is a framing composite price that is designed as a broad measure of price movement in the lumber market. Random Lengths describes itself as a firm that "provides the forest products industry with unbiased, consistent and timely reports of market activity and prices, related trends, issues, and analyses." (*www.randomlengths.com*).

[2] Consumption data is from Forest Economic Advisors (FEA). FEA describes itself as a firm that "brings modern econometric techniques to the forest products industry." (*www.getfea.com*).

Regarding outreach efforts, USDA announced at the Board's meeting on May 25, 2016, that the referendum scheduled for August 2016 would be postponed to a future to-be-determined date. USDA also announced at the meeting that it would publish a notice in the **Federal Register** on the postponement. After the meeting, the Board issued a newsflash to industry members advising them accordingly.

A 60-day comment period is provided to allow interested persons to respond to this interim rule. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

After consideration of all relevant material presented, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared purposes of the 1996 Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This interim rule extends the time frame for USDA to conduct a referendum under the Order from five years (2016) after the program took effect to no later than seven years (2018); (2) postponing the 2016 referendum will give USDA time to complete a separate rulemaking action on the Order's exemption threshold that is being initiated in response to a May 2016 federal district court decision in *Resolute;* (3) USDA announced at the Board's meeting on May 25, 2016, that the 2016 referendum would be postponed, and the Board subsequently issued a newsflash to industry members advising them of the postponed referendum; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Promotion, Reporting and recordkeeping requirements, Softwood lumber.

For the reasons set forth in the preamble, 7 CFR part 1217 is amended as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1217.81, revise paragraph (b)(2) to read as follows:

§ 1217.81 Referenda.

* * * * *

(b) * * *

(2) No later than seven years after this Order becomes effective and every five years thereafter, to determine whether softwood lumber manufacturers for the U.S. market favor the continuation of the Order. The Order shall continue if it is favored by a majority of domestic manufacturers and importers voting in the referendum who also represent a majority of the volume of softwood lumber represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the domestic manufacturing or importation of softwood lumber;

* * * * *

Dated: August 25, 2016.

Elanor Starmer,

Administrator.

[FR Doc. 2016–20805 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 101, 103, 112, 113, and 114

[Docket No. APHIS–2008–0008]

RIN 0579–AD19

Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations regarding the packaging and labeling of veterinary biological products to provide for the use of an abbreviated true name on small final container labeling for veterinary biologics; require labeling to bear a consumer contact telephone number; change the format used to show the establishment or permit number on labeling and require such labeling to show the product code number; change the storage temperature recommended in labeling for veterinary biologics; require vaccination and revaccination recommendations in labeling to be consistent with licensing data; require labeling information placed on carton tray covers to appear on the outside face of the tray cover; remove the restriction requiring multiple-dose final containers of veterinary biologics to be packaged in individual cartons; require labeling for bovine virus diarrhea vaccine containing modified live virus to bear a statement warning against use in pregnant animals; reduce the number of copies of each finished final container label, carton label, or enclosure required to be submitted for review and approval; require labels for autogenous biologics to specify the organism(s) and/or antigen(s) they contain; and require labeling for conditionally licensed veterinary biologics to bear a statement concerning efficacy and potency requirements. In addition, we are also amending the regulations concerning the number of labels or label sketches for experimental products required to be submitted for review and approval, and the recommended storage temperature for veterinary biologics at licensed establishments. These changes are necessary in order to update and clarify labeling requirements and to ensure that information provided in labeling is accurate with regard to the expected performance of the product.

DATES: Effective October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Donna L. Malloy, Section Leader, Operational Support, Center for Veterinary Biologics Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 851–3426.

SUPPLEMENTARY INFORMATION:

Background

Under the Virus-Serum-Toxin Act (the Act, 21 U.S.C. 151–159) and regulations issued under the Act, the Animal and Plant Health Inspection Service (APHIS) grants licenses or permits for biological products which are pure, safe, potent, and efficacious when used according to label instructions. The regulations in 9 CFR part 112, "Packaging and Labeling" (referred to below as the regulations), prescribe requirements for the packaging and labeling of veterinary biological products including requirements applicable to final container labels, carton labels, and enclosures. The main purpose of the regulations in part 112 is to regulate the packaging and labeling of veterinary biologics in a comprehensive manner, which includes ensuring that labeling provides adequate instructions for the proper use of the product, including vaccination schedules, warnings, and cautions. Complete labeling (either on the product or accompanying the product) must be reviewed and approved by APHIS in accordance with the regulations in part 112 prior to their use.

Although the science of immunology and our understanding of how veterinary biologics work have advanced substantially in recent years, communicating such information to consumers and veterinarians by way of updated labeling claims, cautions, and warnings is a top priority of APHIS. Therefore, on January 13, 2011, we published in the **Federal Register** (76 FR 2268–2277, Docket No. APHIS–2008–0008) a proposal[1] to amend the regulations to make veterinary biologics labeling requirements more consistent with current science and veterinary practice.

We solicited comments concerning our proposal for 60 days ending March 14, 2011. We received six comments from five commenters by that date. The comments were from licensees, permittees, veterinary biologics industry associations, and a veterinary medical association. All of the commenters were generally supportive of the proposed rule, but raised a number of questions and concerns about its provisions. They are discussed below by topic.

True Name, Abbreviated True Names, Functional/Chemical Name

Two commenters noted that the proposed rule states that the abbreviated true name must be identical to that shown on the product license. One commenter stated that the use of abbreviations for true names on small labels would be beneficial only if they are standardized. This commenter expressed concern that without standardization, the use of such abbreviations could result in confusion. The other commenter stated that it was unclear whether the proposal means that a standardized abbreviation that corresponds to the true name shown on the license must be used, that the abbreviation will be negotiated on a case-by-case basis and noted on the product license, or that no abbreviations may be used unless they are also reflected on the product license. The commenter further stated that reissuing licenses for every approved biologic product simply to add abbreviations is unreasonable, and that APHIS should issue a memorandum with a list of standardized abbreviations for use by licensees.

APHIS will assign abbreviated true names when issuing new product licenses, when there is a need to reissue a product license (*e.g.*, renewal of Conditional Licenses, or change in ownership) or upon specific request.

One commenter stated that container labels for diagnostic kits should not be required to include both the true name of the kit and the functional and/or chemical name of the reagent. The commenter noted that the proposed rule includes a requirement to add product code numbers and that this will provide consumers with a reference to connect the component with the specific kit. The commenter further stated that adding the true name would not give consumers any additional useful information, but would significantly increase the amount of text required on the label.

APHIS agrees that reagents can be linked to a particular kit through the product code as well as the true name, and we have amended § 112.2(a)(3)(ii) to specify that the product code number may be used in lieu of the true name on small containers for critical components of diagnostic kits. In the case of small reagent containers within a diagnostic kit, those reagents that should not be used with other kits must bear functional/chemical name of the reagent and the applicable kit product code, but not necessarily the true name of the kit. Reagents that are considered interchangeable need not have the kit product code, but must bear the functional/chemical name of the reagent.

One commenter stated that the proposed rule's "Background" section indicates that carton labels and enclosures would be required to contain both the full true name and the associated abbreviation, but that the regulatory text does not include such a provision. Two commenters also stated that if a licensee does not use an abbreviation on the final container label, then an explanation of the abbreviation should not be required on the carton label and enclosure.

APHIS acknowledges that there was an inconsistency between the preamble and regulatory text in the proposed rule; the provisions in the regulatory text are correct. APHIS also agrees with the commenters that an explanation of an abbreviation should not be required on the carton label and enclosure when the abbreviation is not used on the final container label. We note that § 112.2(a)(1)(i) states that the abbreviation may be used on small final containers, provided that the complete true name must appear on the carton label and enclosures, but does not require explanations of abbreviation if abbreviations are not used.

One commenter stated that firms should be allowed to use existing abbreviated names and have input on newly assigned abbreviated names. The commenter noted that abbreviated names are currently used as part of foreign registrations and that any changes would require significant submission and label review (including registration fees) by several authorities. The commenter also noted that these names are often part of corporate branding strategies that are costly to develop and implement. The commenter stated that unless there are specific concerns with an existing or requested abbreviated name (*e.g.*, mislabeling), APHIS should not require changes in existing products nor reject reasonable suggestions by the firms.

APHIS is aware that there are a variety of issues associated with changing established abbreviations and may allow licensees to use established abbreviations on export labels on a case-by-case basis.

Consumer Contact Telephone Number

Two commenters stated that in the case of small final container labels, the requirement for a consumer contact telephone number in § 112.2(a)(2) should be waived when the telephone number is included on the carton label or enclosure. Another commenter stated that there will likely be instances where it will be difficult to include all contact information on a small final container without rendering the text illegible. This commenter stated that in these instances, there should be an exception allowing this information to be provided on a minimum of one labeling component (*e.g.*, carton label or enclosure).

For small, single-dose containers, APHIS will consider this requirement to be satisfied if all contact information, including the telephone number, is provided on the carton and enclosure labeling materials. We have amended the regulatory text to read "Provided, that in the case of a biological product exported from the United States in labeled final containers, a consumer contact telephone number is not required; however, small single dose containers marketed in the United States must include contact telephone information on carton and enclosures," to clarify this requirement.

---

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0008*.

Veterinary License/Permit Number and Product Code Number

Two commenters opposed requiring a product code number on labeling materials. The commenters stated that instead of facilitating product identification in the field, it would more likely add to confusion by those trying to identify a product in distribution channels and in the field. The commenters stated that historically there has been no difficulty using a licensee's product serial number to trace it back to a specific product code.

APHIS disagrees with the commenters. We believe that adding the product code will provide a valuable piece of information that will allow the consumer to differentiate between products with the same trade name. For example, if a company makes a product which contains a dye, and another which does not, the products would have different products codes but the same true name. If a consumer reports a problem with one of these products, we would not be able to identify which product caused the problem using only the true name.

One commenter asked whether peel-off labels intended for insertion in medical records would be required to contain the veterinary license number or veterinary permit number, the Product Code number, and the serial number. The commenter expressed concern that this may not be possible without rendering text illegible.

APHIS notes that there are currently no regulations that specify the information that must appear on a peel-off portion of a label, nor would this final rule establish any. Instead, it requires certain information appear on container labels, with exceptions given to small final containers and containers of interchangeable reagents included in diagnostic test kits.

One commenter asked how the proposal addresses combination packages, where the product code for the combination package is different from the product code for the lyophilized cake, which is different from the product code for the diluent vaccine. Similarly, one commenter stated that if the requirement for the product code number is kept, then biological product container labels should also be exempt from the requirement unless they are stand-alone presentations. The commenter stated that there are situations in which desiccated and diluent components can be used in multiple licensed combinations.

APHIS agrees with the commenters that having different product codes on components and a combination package carton could be confusing to consumers. We have amended the regulatory text by adding a new paragraph (iii) to § 112.2(a)(3) that allows container labels for components of combination packages to read "see carton for product code." In addition, we are adding a definition of "combination package" to § 101.3. Because combination packages, which contains two or more licensed biological products, are not a new concept to the regulated industry, and further, the term "combination package" is used in the regulations, specifically in § 101.3(h) and § 112.2(a)(9)(iv), we believe that it would be beneficial to define this term in order to clarify these new packaging and labeling requirements.

Instructions for Use of the Product

One commenter did not object to the revision of the description of "full directions for use" in § 112.2(a)(5)(i) but suggested two changes. The commenter stated first that the phrase "very small" should be deleted in the first line, because this would make the question of applicability needlessly complicated and second that "carton tray covers" should be added to the list of locations that may be too small. Another commenter suggested revising § 112.2(a)(5)(i) to read "In case of limited space on final container labels, cartons, or carton tray covers, a statement shall be used as to where such information is to be found . . .". This commenter stated that APHIS currently allows the reference to a carton or insert for complete information, and requested the revision to ensure that the practice can be continued.

APHIS does not agree that limited space is a problem with cartons or carton tray covers. We believe that with the exception of small containers, there is ample space for this information. We agree with the second commenter that limited space on final container labels may present a problem and have amended the requirements to allow a statement referring to a carton or insert on final container labels. We have also removed the words "very small" as requested by the first commenter. The provisions now appear in § 112.2(a)(5).

Disposal of Containers and Warnings

One commenter stated that as written, the proposed requirements in § 112.2(a)(7) would apply to both viable and killed products, but that they should instead apply only to products containing viable organisms because there is no rationale for requiring inactivation of inactivated products.

APHIS agrees with the commenter. We have amended the regulatory text to clarify that the requirement to inactivate applies only to product containing viable organisms.

One commenter stated that § 112.2(a)(7) should give licensees the added flexibility of recognizing situations in which the warning would not be on the container label. The commenter suggested rephrasing the warning to read "Do not mix with other biological products except as specified on this label [or carton, or insert, as applicable]."

APHIS agrees that minor modifications of the text in the regulations may be appropriate. We have amended the introductory text of § 112.2(a)(7) to allow added flexibility for statements of equivalent intent.

Two commenters stated that there should be a shortened version of the warning for small-label situations, such as, "Do not mix with other products." This would allow for use of a larger, more legible font size for the warning. The same two commenters stated that the warning in § 112.2(a)(7)(ii) should be revised to read "In case of human exposure, contact a physician." The commenters stated that this language would convey the same information, would be more concise, and would allow the use of a larger, more legible font size for the warning.

APHIS agrees with the commenters that these shorter warning statements are appropriate. We have amended the recommended statements to read "Do not mix with other products, except as specified on this label" and "In case of human exposure, contact a physician." As we explained above, we have also amended the introductory text of § 112.2(a)(7) to allow equivalent statements.

Two commenters stated that there should be a shortened version of the inactivation notice for small-container labels, such as "Inactivate unused contents." This would allow for use of a larger, more legible font size for the warning. Another commenter stated that the additional statements will contribute to space and legibility issues on labels. The commenter stated that the additional statements should be allowed to be included on an insert or carton label.

APHIS will consider shortened versions on a case-by-case basis to accommodate space issues.

One commenter stated that the preamble of the proposed rule states that chemical treatment will be required prior to disposal of containers containing viable or dangerous organisms or viruses; however, § 112.2(a)(7)(iii) states "inactivate" which suggests that other forms of inactivation other than chemical will be allowed. The commenter asked if that was the intent.

The commenter is correct that there was a discrepancy between the preamble and proposed regulatory text. Consumers may use any suitable means to inactivate unused contents.

One commenter stated that the proposed changes to § 112.7(g)(4) would require changes in revaccination recommendations for all instances in which there are not sufficient data for specific recommendations. The commenter stated that these changes should be applied only prospectively as the labeling for such products are otherwise modified.

APHIS does not agree that this rule should apply only to new labels that are submitted for approval, and not to labels that are currently approved. We believe that having two standards for information that appears on labels would be confusing to the public and to the industry. We note that we have made nonsubstantive, editorial changes to § 112.7 and this requirement now appears in paragraph (f) rather than paragraph (g)(4).

One commenter supported the proposed changes to § 112.6(a) to allow flexibility in the packaging of diluent with biological products. The commenter stated, however, that proposed § 112.2(f)(1) has not been revised to authorize this flexibility, and recommended that it be changed accordingly.

The commenter is correct. We have amended the paragraph to read "If a carton label or an enclosure is required to complete the labeling for a multiple-dose final container of liquid biological product, only one final container, with a container of diluent if applicable, shall be packaged in each carton: *Provided,* That if the multiple-dose final container is fully labeled without a carton label or enclosure, two or more final containers, and a corresponding number of diluent containers, may be packaged in a single carton which shall be considered a shipping box. Labels or stickers for shipping boxes shall not contain false or misleading information, but need not be submitted to APHIS for approval."

Non-Antibiotic Preservatives

One commenter stated that the term "non-antibiotic preservative" is not defined in § 101.3 and asked for additional clarification so that firms could comply with the labeling requirement.

The regulations previously restricted disclosure to antibiotic preservatives, but APHIS believes that non-antibiotic preservatives may need to be disposed of properly (*e.g.,* merthiolate, phenol) or have consumer safety impact (*e.g.,* sodium azide). This information needs to be readily available to consumers. Any preservative, regardless of nature, should be disclosed. We have amended § 112.2(a)(10) to remove the specific references to antibiotic and non-antibiotic preservatives.

One commenter asked whether residual traces of an inactivating agent would be considered a preservative under proposed § 112.2(a)(10).

Under § 112.2(a)(10), inactivants are not considered preservatives.

One commenter also asked whether, if this change is adopted, there would not be any reason to maintain a distinction between antibiotic and non-antibiotic preservatives.

APHIS agrees that there is no need to maintain that distinction. We have amended § 112.2(a)(10) to specify only that a statement naming the preservative used must appear on the final container label, or on cartons and enclosures, if used.

Two commenters noted that there are differing opinions about what is or is not a preservative. Both commenters stated these concerns could be resolved by revising the paragraph to state that the labeling will include the preservatives as listed in section IV.B of the Outline of Production. One commenter stated that if APHIS does not modify the proposed rule to identify only those items in section IV.B of the Outline of Production, label identification should not apply simply because a non-antibiotic preservative is used at any step in the production process. The commenter stated that such materials may be used in stages of the manufacturing process, yet through a dilution effect or processes the residual levels are determined to be nominal. The commenter stated that APHIS should consider the establishment of a threshold for determining the level of non-antibiotic preservatives at which this requirement is triggered.

Any preservatives still remaining at detectable levels in completed products should be declared on labeling. We have amended § 112.2(a)(10) to clarify this requirement. We will develop guidance on this issue and make it available in an update to VS Memorandum 800.54 (Guidelines for the Preparation and Review of Labeling Materials). This memorandum is available on the APHIS Web site at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/veterinary-biologics/biologics-regulations-and-guidance/ct_vb_vs_memos.*

One commenter stated that concerns for potential residues in food and unfavorable reactions in animals are not applicable to diagnostic test kits, regardless of whether the preservatives used are antibiotic or non-antibiotic.

APHIS agrees, but describing the potentially hazardous ingredients in any biological product is also important from a standpoint of proper disposal. For this reason, this rule applies to diagnostic test kits.

One commenter stated that potential environmental harm is not based on whether the preservative is antibiotic or non-antibiotic. The commenter further stated that the distinction is arbitrary in assessing environmental harm and does not support a requirement to include non-antibiotic preservatives but rather to exempt antibiotic preservatives. The commenter also expressed concern that extending the rule to include considerations of environmental harm seems to go beyond the scope of the Virus-Serum-Toxin Act.

Several States and municipalities have legislation regarding the disposal of certain products, such as those containing mercury. Disclosing all preservatives facilitates proper disposal of products in accordance with State laws and local ordinances.

For Animal Use Only

Two commenters stated that the preamble of the proposed rule indicates that the change in § 112.2(d)(3) to require the statement "for use in animals only" instead of "for veterinary use only" is intended to clarify that the product is for use in animals rather than for use in humans. The commenters stated that they did not believe this was an issue of significant confusion. One commenter further stated that because this change is not related to concerns regarding the purity, potency, safety, or efficacy of veterinary biological products, APHIS should allow for the use of alternative similar statements, including the current "for veterinary use only." The other commenter stated that providing for alternatives would allow the use of a single label, both domestically and internationally, for a product that may be exported to a jurisdiction where minor differences in wording are required. The commenter stated that such a policy would promote the export of veterinary biologics from the United States. The commenter also noted that Canada requires the label statement "Veterinary use only."

APHIS prefers the warning "for animal use only" as a replacement for

"for veterinary use only" on domestic labeling but § 112.2(d)(3) states that "for animal use" may be used, not that it must be used. This does not preclude alternative wording where justified.

Two commenters stated that it is not clear why the proposed regulations direct the licensee to put the warning on "carton labels and enclosures" rather than the more general "labeling as appropriate." The commenter recommended that the more general language be used.

APHIS agrees with the commenters and has amended § 112.2(d)(3) to use the more general language suggested.

Special Labels for Export

Three commenters noted that proposed § 112.2(e) contains requirements that differ significantly from the provisions of VS Memorandum 800.208 (Special Labels for Product for Export). One commenter stated that this section should not be amended at all and the proposed changes should be rejected. Another commenter stated that the section needs to be rewritten to reflect the more practical policy of the memorandum. One commenter also stated that the proposed rule does not include consideration for foreign-language portions of multi-language kit labeling. The commenter pointed out that a variation in a test protocol might be required in a specific country and asked that APHIS allow the protocol to appear in the specific language with an accompanying statement that it is approved only in the identified country.

APHIS is aware that some foreign regulatory authorities do not provide label approvals per se. We have amended § 112.2(e) to provide flexibility in the type of foreign documentation provided and to be consistent with established guidelines currently in VS Memorandum 800.208.

Carton Tray Covers

Two commenters raised concerns about the proposed requirements for carton tray covers. One commenter stated that it is appropriate to address labeling on tray covers, but that the language of proposed § 112.2(f)(2) would require all labeling to be on the outside face of the tray. The commenter stated that in the case of small covers, there should be flexibility to allow a sentence referring the user to another location of full labeling information. The commenter also stated that § 112.2(f)(2) should be amended to be consistent with, or combined with § 112.2(a)(5). The commenter further stated that the regulations should indicate which information should be immediately visible to the consumer and which could be provided elsewhere with reference to that location on the carton. The other commenter stated that § 112.2(f)(2) should be amended to read "In case of limited space on final container labels, carton labels, or carton tray covers, a statement shall be used as to where such information is to be found . . ." This commenter stated that APHIS currently allows the reference to an enclosure for complete information and the proposal should be amended to allow that practice to continue.

As we explained in the proposed rule, carton tray covers have come to be extensively used in the packaging of diagnostic test kits. They are also used in the packaging of multi-packs of single-dose vaccine. The proposed change would ensure that the information shown on carton tray covers is equivalent to other types of cartons and is presented in a manner that is accessible to the consumer without having to open the product. We are making no changes in response to this comment.

Packaging Multiple-Dose Final Containers

The commenter stated that, according to the preamble of the proposed rule, the changes to § 112.6(a) are intended to remove the requirement for a multiple-dose final product to be packaged with only one vial of diluent. The commenter stated, however, that the last sentence as proposed requires "a carton or enclosure in order to provide all information required under the regulations."

The regulatory provisions are intended to allow multiple containers in one carton if the container labels contain all the information required by regulations. If the containers do not have all the information, and instead rely on a carton or enclosure for additional information, then the containers must continue to be packaged one per carton to ensure complete labeling for each product unit.

Special Additional Requirements

One commenter stated that the proposed revisions to § 112.7(f) would require a pregnancy warning on all modified live and inactivated vaccines for use in mammals unless the vaccine has been shown to be safe in pregnant animals. The commenter stated that this requirement should be applied only to new products and to products with antigens recognized as having a risk in pregnant animals. The commenter stated further that these changes should be applied only prospectively as the labeling for such products are otherwise modified.

APHIS believes that it is appropriate for the label to convey information on whether or not the product has been tested in pregnant animals in order to convey meaningful care information regarding the health of the fetus. We have amended the required statement to read "This product has not been tested in pregnant animals" and we will continue to allow equivalent statements acceptable to APHIS. As a result of editorial changes made to § 112.7, these requirements now appear in paragraph (e).

One commenter stated that the preamble of the proposed rule states that the regulations would require labeling to bear the following statement: "A specific revaccination schedule has not been established for this product; consultation with a veterinarian is recommended." The commenter agreed that this is an appropriate label statement, but noted that the actual language proposed is different, stating "The need for annual booster vaccinations has not been established for this product." The commenter requested that the language be amended to allow for the use of equivalent statements and to be provided in an enclosure or other location, with an appropriate reference to the location, when space is limited on labels or outer packaging. The commenter stated that this would allow flexibility to tailor statements where necessary to meet differences unique to species and/or antigens. Another commenter stated that the requirement for a revaccination statement should only be applied prospectively as the labeling for such products is otherwise modified.

APHIS has amended the regulatory text to agree with the preamble, as the latter is more inclusive. We disagree that the requirement should be applied prospectively. Having two standards for the information that appears on labels would be confusing to the public and to the industry.

Miscellaneous Changes

Three commenters asked that the implementation schedule be changed from 3 years to 5 years. One commenter stated that the proposed changes have in most cases been under discussion for more than a decade, which argues against the need for urgency in the implementation of the new requirements. This commenter stated further that APHIS underestimates the magnitude of the tasks required to implement the changes.

APHIS notes that a recent final rule (80 FR 39669–39675, Docket No. APHIS–2011–0049), which amended the regulations to provide for the use of a simpler labeling format, provided for a 4-year phase-in of the labeling and data summary requirements, with additional extensions of up to 2 years allowed under certain conditions. In order to be consistent with that rule and to minimize sequential label changes, we will also adopt a 4-year phase-in of the packaging and labeling requirements in this rule, with additional extensions of up to 2 years allowed under certain conditions. As we explained in that final rule, we intend to implement that rule and this one concurrently, and we will coordinate implementation with industry.

Section 103.3(d) currently requires that a request for authorization to ship an unlicensed biological product for experimental study include, among other things, two copies of labels or label sketches which show the name or identification of the product and bear the statement "Notice! For experimental use only—Not For Sale" or equivalent statement. However, most applicants submit these requests electronically, and those that still arrive on paper are scanned upon receipt. The requirement that two copies be submitted is no longer necessary, and we are amending this paragraph to require only one copy of the labels or label sketches.

We are amending § 112.5(a) to indicate that transmittal forms to be used with submissions of sketches and labels may be found on the APHIS Web page.

We proposed to amend § 112.7(j)(1) and (2) to require that all but very small final container labels for feline panleukopenia vaccines contain recommendations for use. Specifically, we would have required that these recommendations state that for healthy cats vaccinated at less than 12 weeks of age, a second dose of the vaccine should be given at 12 to 16 weeks of age. Since the proposed rule was published, however, research has shown that the booster for the feline panleukopenia vaccine should not be given earlier than 16 weeks. Therefore we are amending the requirements in new paragraphs (i)(1) and (2) to read ". . . a second dose should be given no earlier than 16 weeks of age."

We are amending § 113.206(d)(2) to update a reference to labeling requirements that now appear in § 112.7(h).

Issues Outside the Scope of the Rulemaking

One commenter stated that the current "true name" system fails to uniquely and accurately identify products. The commenter stated that the system should be changed to correct this problem but did not specify how.

We did not propose to make any changes to the true name system in this rulemaking. We are aware of issues associated with the current system and will consider addressing this issue in a future action.

One commenter asked that APHIS remove the restriction upon the use of trade names for conditionally licensed products. Two commenters requested changes to § 112.8(c), which sets out requirements for labels on shipping containers of products for export. These issues are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* Web site (see footnote 1 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is amending the Virus-Serum-Toxin Act regulations regarding the packaging and labeling requirements for veterinary biologics products. Most of the changes are intended to increase the information readily available to consumers (such as veterinarians, livestock and dairy producers, pet stores, and animal health technicians). These changes are necessary to update and clarify labeling requirements for veterinary biologics licensees (manufacturers of veterinary biologics) and permittees (importers of veterinary biologics) to ensure that information provided in labeling is accurate with regard to the expected performance of the product.

This action will affect all veterinary biologics product licensees and permittees. Currently, there are approximately 100 veterinary biological establishments, including permittees, and the majority of them are small entities. These companies produce about 1,900 different products, and there are about 11,700 active approved labels for veterinary biologics. There were about 3,100 labels submitted for approval from June 2012 through May 2013 by about two-thirds of the companies. The average number of labels submitted per company over that time frame was 46 and the median was 8.

The veterinary biologics industry has grown substantially in the United States in recent years; the Census Bureau's Annual Survey of Manufacturers (ASM) reports that the annual shipment value of veterinary biological products increased by $2.06 billion (or 88 percent) from $2.34 billion in 2006 to $4.40 billion in 2010 and have been stable at around $4.33 to $4.60 billion from 2010 to 2014. In 2015, the United States exported about $1.2 billion and imported about $0.9 billion of veterinary biologic products, including exports and imports of veterinary medicaments which were packaged for retail sale.

The action will benefit consumers of veterinary biologic products and, ultimately, the animals they treat with those products. This is because the action aims to ensure that consumers have complete and up-to-date instructions for the proper use of those products, including vaccination schedules, warnings, and cautions.

We anticipate that the costs associated with this rule will be one-time costs to the industry that will overlap with the expected one-time costs of the single label claim rule (80 FR 39669–39675, Docket No. APHIS–2011–0049), which became effective on September 8, 2015. APHIS is allowing the manufacturers to delay implementing the single label claim rule until this rule becomes effective, so that the required label revisions by these two rules are being carried out concurrently. As addressed in the economic analysis of the single label claim rule, we expect the industry's one-time implementation costs associated with the labeling changes in these two rules will fall between about $1.1 million and $4.1

million, with a median estimate of about $2.4 million. Labor costs to plan and implement the required changes (about one-third of the total) and material costs for labeling and packaging (about 40 percent of the total) are key cost components. Other costs are: Label designing (about 20 percent of the total) and standardized summaries for efficacy and safety that are necessary for the single label claim rule (about 6 percent of the total, based on the median cost estimate). We expect that the costs for the industry will not cause significant economic impacts for most veterinary biologics licensees and permittees, and the benefits of this rule justify the costs.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies where they are necessary to address local disease conditions or eradication programs. However, where safety, efficacy, purity, and potency of biological products are concerned, it is the Agency's intent to occupy the field. This includes, but is not limited to, the regulation of labeling. Under the Act, Congress clearly intended that there be national uniformity in the regulation of these products. There are no administrative proceedings which must be exhausted prior to a judicial challenge to the regulations under this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Animal and Plant Health Inspection Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175.

Paperwork Reduction Act

There are information collection activities in this rule. Therefore, in accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we published a notice[2] in the **Federal Register** (80 FR 59725, Docket No. APHIS–2015–0066), announcing our intention to initiate this information collection to solicit comments. We are asking the Office of Management and Budget (OMB) to approve our use of this information collection for 3 years. When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Parts 103 and 114

Animal biologics, Reporting and recordkeeping requirements.

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 101, 103, 112, 113, and 114 as follows:

PART 101—DEFINITIONS

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 101.3, paragraph (q) is added to read as follows:

§ 101.3 Biological products and related terms.

* * * * *

(q) *Combination package.* Biological product consisting of two or more licensed biological products. Each completed product in final container is packaged together and mixed prior to administration. A combination package is issued a separate U.S. Veterinary Biological Product License and assigned a product code number to distinguish it from its component products, which also may be marketed individually unless otherwise restricted.

PART 103—EXPERIMENTAL PRODUCTION, DISTRIBUTION, AND EVALUATION OF BIOLOGICAL PRODUCTS PRIOR TO LICENSING

■ 3. The authority citation for part 103 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 4. In § 103.3, paragraph (d) is revised to read as follows:

§ 103.3 Shipment of experimental biological products.

* * * * *

(d) A copy of the labels or label sketches which show the name or identification of the product and bear the statement "Notice! For experimental use only-Not For Sale" or equivalent. Such statement shall appear on final container labels, except that it may appear on the carton in the case of very small final container labels and labeling for diagnostic test kits. The U.S. Veterinary License legend shall not appear on such labels; and

* * * * *

PART 112—PACKAGING AND LABELING

■ 5. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 112.2 is amended as follows:

■ a. By revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), and (a)(10).

■ b. At the end of paragraphs (a)(6) and (a)(9)(iv), by removing the semicolon and adding a period in its place.

---

[2] To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0066.*

■ c. By revising paragraphs (d)(3), (e), and (f).

The revisions read as follows:

§ 112.2 Final container label, carton label, and enclosure.

(a) * * *

(1) The complete true name of the biological product which name shall be identical with that shown in the product license under which such product is prepared or the permit under which it is imported, shall be prominently lettered and placed giving equal emphasis to each word composing it. Descriptive terms used in the true name on the product license or permit shall also appear. Abbreviations of the descriptive terms may be used on the final container label if complete descriptive terms appear on the carton label and enclosure. The following exceptions are applicable to small final containers, and containers of interchangeable reagents included in diagnostic test kits:

(i) For small final containers, an abbreviated true name of the biological product, which shall be identical with that shown in the product license under which the product is prepared or the permit under which it is imported, may be used: *Provided,* That the complete true name of the product must appear on the carton label and enclosures;

(ii) In addition to the true name of the kit, the functional and/or chemical name of the reagent must appear on labeling for small final containers of reagents included in diagnostic kits: *Provided,* That the true name is not required on labeling for small final containers of interchangeable (non-critical) components of diagnostic kits.

(2) For biological product prepared in the United States or in a foreign country, the name and address of the producer (licensee, or subsidiary) or permittee and of the foreign producer, and an appropriate consumer contact telephone number: *Provided,* That in the case of a biological product exported from the United States in labeled final containers, a consumer contact telephone number is not required; however, small single dose containers marketed in the United States must include contact telephone information on carton and enclosures.

(3) The United States Veterinary Biologics Establishment License Number (VLN) or the United States Veterinary Biological Product Permit Number (VPN), and the Product Code Number (PCN) assigned by the Department, which shall be shown only as "VLN/PCN" and "VPN/PCN," respectively, except that:

(i) Only the VLN or VPN is required on container labels of interchangeable (non-critical) components of diagnostic kits and container labels for individual products packaged together for co-administration.

(ii) The PCN may be used in lieu of the true name of the kit on small container labels for critical components of diagnostic kits.

(iii) Container labels for individually licensed biological products, when marketed as components of combination packages, must include a statement referring the consumer to the carton or enclosure for the PCN of the combination package.

(4) Storage temperature recommendation for the biological product stated as 2 to 8 °C or 35 to 46 °F, or both.

(5) Full instructions for the proper use of the product, including indications for use, target species, minimum age of administration, route of administration, vaccination schedule, product license restriction(s) that bear on product use, warnings, cautions, and any other vital information for the product's use; except that in the case of limited space on final container labels, a statement as to where such information is to be found, such as "See enclosure for complete directions," "Full directions on carton," or comparable statement.

* * * * *

(7) The following warning statements, or equivalent statements, shall appear on the labeling as applicable:

(i) Products other than diagnostic kits: "Do not mix with other products, except as specified on this label."

(ii) Injectable products and other products containing hazardous components: "In case of human exposure, contact a physician."

(iii) Products containing viable organisms: "Inactivate unused contents before disposal."

* * * * *

(10) In the case of a product that contains a preservative that is added during the production process and is not reduced to undetectable levels in the completed product through the production process, the statement "Contains [name of preservative] as a preservative" or an equivalent statement must appear on cartons and enclosures, if used. If cartons are not used, such information must appear on the final container label.

* * * * *

(d) * * *

(3) The statement "For use in animals only" may appear on the labeling as appropriate for a product to indicate that the product is recommended specifically for animals and not for humans.

(e) When label requirements of a foreign country differ from the requirements as prescribed in this part, special labels may be approved by APHIS for use on biological products to be exported to such country upon receipt of written authorization, acceptable to APHIS, from regulatory officials of the importing country, provided that:

(1) If the labeling contains claims or indications for use not supported by data on file with APHIS, the special labels for export shall not bear the VLN.

(2) All other labels for export shall bear the VLN unless the importing country provides documentation that the VLN is specifically prohibited. When laws, regulations, or other requirements of foreign countries require exporters of biological products prepared in a licensed establishment to furnish official certification that such products have been prepared in accordance with the Virus-Serum-Toxin Act and regulations issued pursuant to the Act, such certification may be made by APHIS.

(f) Multiple-dose final containers of liquid biological product and carton tray covers showing required labeling information are subject to the requirements in this paragraphs.

(1) If a carton label or an enclosure is required to complete the labeling for a multiple-dose final container of liquid biological product, only one final container, with a container of diluent if applicable, shall be packaged in each carton: *Provided,* That if the multiple-dose final container is fully labeled without a carton label or enclosure, two or more final containers, and a corresponding number of diluent containers, may be packaged in a single carton which shall be considered a shipping box. Labels or stickers for shipping boxes shall not contain false or misleading information, but need not be submitted to APHIS for approval.

(2) When required labeling information is shown on a carton tray cover, it must be printed on the outside face of such tray cover where it may be read without opening the carton. The inside face of the tray cover may contain information suitable for an enclosure.

* * * * *

■ 7. In § 112.3, paragraph (f)(2) is revised to read as follows:

§ 112.3 Diluent labels.

* * * * *

(f) * * *

(2) The biological product is composed of viable or dangerous

organisms or viruses, the notice, "Inactivate unused contents before disposal."

* * * * *

■ 8. Section 112.5 is amended as follows:

■ a. In paragraph (a), by removing the words "available on the Internet at (*http://www.aphis.usda.gov/animalhealth/cvb/forms*)" and adding in their place the words "available on the APHIS Web page at *http://www.aphis.usda.gov/animalhealth/cvb/forms*".

■ b. By revising paragraphs (d)(2)(ii) and (d)(2)(v), and at the end of paragraph (d)(2)(vi), by removing the period and adding a semicolon in its place.

■ c. By adding paragraphs (d)(2)(vii) through (d)(2)(x).

■ d. By revising paragraphs (e)(1)(iii), (e)(1)(iv), (e)(4), and (f)(1).

■ e. By removing paragraph (f)(2) and redesignating paragraph (f)(3) as new paragraph (f)(2).

The additions and revisions read as follows:

§ 112.5 Review and approval of labeling.

* * * * *

(d) * * *

(2) * * *

(ii) Changes in the color of label print or background, provided that such changes do not affect the legibility of the label;

* * * * *

(v) Adding, changing, deleting, or repositioning label control numbers, universal product codes, or other inventory control numbers;

* * * * *

(vii) Changing the telephone contact number;

(viii) Adding, changing, or deleting an email and/or Web site address;

(ix) Changing the establishment license or permit number assigned by APHIS, and/or changing the name and/or address of the manufacturer or permittee, provided that such changes are identical to information on the current establishment license or permit; and

(x) Adding or changing the name and/or address of a distributor.

(e) * * *

(1) * * *

(iii) For finished labels, submit two copies of each finished final container label, carton label, and enclosure: *Provided,* That when an enclosure is to be used with more than one product, one extra copy shall be submitted for each additional product. One copy of each finished label will be retained by APHIS. One copy will be stamped and returned to the licensee or permittee. Labels to which exceptions are taken shall be marked as sketches and handled under paragraph (e)(1)(i) of this section.

(iv) For finished master labels, submit for each product two copies each of the enclosure and the labels for the smallest size final container and carton. Labels for larger sizes of containers or cartons of the same product that are identical, except for physical dimensions, need not be submitted. Such labels become eligible for use concurrent with the approval of the appropriate finished master label, provided that the marketing of larger size final containers is approved in the filed Outline of Production, and the appropriate larger sizes of containers or cartons are identified on the label mounting sheet. When a master label enclosure is to be used with more than one product, one extra copy for each additional product shall be submitted. One copy of each finished master label will be retained by APHIS. One copy will be stamped and returned to the licensee or permittee. Master labels to which exception are taken will be marked as sketches and handled under paragraph (e)(1)(ii) of this section.

* * * * *

(4) To appear on the bottom of each page in the lower left hand corner, if applicable:

(i) The dose size(s) to which the master label applies.

(ii) The APHIS assigned number for the label or sketch to be replaced.

(iii) The APHIS assigned number for the label to be used as a reference for reviewing the submitted label.

(f) * * *

(1) An accurate English translation must accompany each foreign language label submitted for approval. A statement affirming the accuracy of the translation must also be included.

* * * * *

■ 9. In § 112.6, paragraph (a) is revised to read as follows:

§ 112.6 Packaging biological products.

(a) Multiple-dose final containers of a biological product with final container labeling including all information required under the regulations may be packaged one or more per carton with a container(s) of the proper volume of diluent, if required, for that dose as specified in the filed Outline of Production: *Provided,* That cartons containing more than one final container of product must comply with the conditions set forth in paragraphs (c)(1) through (4) of this section. Multiple-dose final containers of a product that require a carton or enclosure in order to provide all information required under the regulations shall be packaged one container per carton with the proper volume of diluent, if required, for that dose as specified in the filed Outline of Production.

* * * * *

■ 10. Section 112.7 is amended as follows:

■ a. By revising paragraphs (e), (f), (i), and (l).

■ b. By adding paragraph (n).

The addition and revisions read as follows:

§ 112.7 Special additional requirements.

* * * * *

(e) Labeling for all products for use in mammals must bear an appropriate statement concerning use in pregnant animals.

(1) For bovine rhinotracheitis vaccine or bovine virus diarrhea vaccine containing modified live virus, all labeling except small final container labels shall bear the following statement: "Do not use in pregnant cows or in calves nursing pregnant cows.": *Provided,* That such vaccines which have been shown to be safe for use in pregnant cows may be excepted from this label requirement by the Administrator.

(2) For other modified live and inactivated vaccine, labeling shall bear a statement appropriate to the level of safety that has been demonstrated in pregnant animals.

(i) Products known to be unsafe in pregnant animals shall include statements such as "Do not use in pregnant animals," or "Unsafe for use in pregnant animals," or an equivalent statement acceptable to APHIS.

(ii) Products without safety documentation acceptable to APHIS, but not known to be unsafe, labeling shall include the statement "This product has not been tested in pregnant animals" or an equivalent statement acceptable to APHIS.

(3) For modified live vaccines containing agents with potential reproductive effects but having acceptable pregnant animal safety data on file with APHIS, labeling still must bear the following statement concerning residual risk: "Fetal health risks associated with the vaccination of pregnant animals with this vaccine cannot be unequivocally determined during clinical trials conducted for licensure. Appropriate strategies to address the risks associated with vaccine use in pregnant animals should be discussed with a veterinarian."

(f) For biological products recommending annual booster vaccinations, such recommendations must be supported by data acceptable to APHIS. In the absence of data that establish the need for booster vaccination, labeling must bear the following statement: "The need for annual booster vaccinations has not been established for this product; consultation with a veterinarian is recommended."

* * * * *

(i) All but very small final container labels for feline panleukopenia vaccines shall contain the following recommendations for use:

(1) *Killed virus vaccines.* Vaccinate healthy cats with one dose, except that if the animal is less than 12 weeks of age, a second dose should be given no earlier than 16 weeks of age.

(2) *Modified live virus vaccines.* Vaccinate healthy cats with one dose, except that if the animal is less than 12 weeks of age, a second dose should be given no earlier than16 weeks of age.

* * * * *

(l) All labels for autogenous biologics must specify the name of the microorganism(s) or antigen(s) that they contain, and shall bear the following statement: "Potency and efficacy of autogenous biologics have not been established. This product is prepared for use only by or under the direction of a veterinarian or approved specialist."

* * * * *

(n) All labels for conditionally licensed products shall bear the following statement: "This product license is conditional; efficacy and potency have not been fully demonstrated."

* * * * *

PART 113—STANDARD REQUIREMENTS

■ 11. The authority citation for part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

§ 113.206 [Amended]

■ 12. In § 113.206, paragraph (d)(2) is amended by removing the reference "§ 112.7(i)" and adding the reference "§ 112.7(h)" in its place.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

■ 13. The authority citation for part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

■ 14. Section 114.11 is revised to read as follows:

§ 114.11 Storage and handling.

Biological products at licensed establishments must be protected at all times against improper storage and handling. Completed product must be kept under refrigeration at 35 to 46 °F (2 to 8 °C), unless the inherent nature of the product makes storage at different temperatures advisable, in which case, the proper storage temperature must be specified in the filed Outline of Production. All biological products to be shipped or delivered must be securely packed.

Done in Washington, DC, this 24th day of August 2016.

Elvis S. Cordova,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2016–20749 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 590

Notice of Revised Procedures Affecting Applications and Authorizations for the In-Transit Movement of Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of procedures.

SUMMARY: Pursuant to section 3(a) of the Natural Gas Act (NGA), no person may import or export natural gas without authorization from the Department of Energy (DOE), and DOE will approve such imports or exports unless, after opportunity for a hearing, it determines that the imports or exports are not consistent with the public interest. Section 3(c) of the NGA provides that imports and exports of natural gas from or to countries with which the United States has entered into a free trade agreement (FTA) providing for national treatment for trade in natural gas (FTA countries), and all imports of liquefied natural gas (LNG) from any country, are deemed in the public interest and must be granted without modification or delay. This notice serves to clarify that in-transit shipments of natural gas, *i.e.,* shipments of natural gas that only temporarily pass through the United States before returning to their country of origin, or temporarily pass through a foreign country before returning to the United States, for consumption or other disposition, are not "imports" or "exports" within the meaning of section 3 of the Natural Gas Act. However, DOE will impose monthly reporting requirements on persons making such shipments in order to ensure these movements meet the criteria defining in-transit shipments, and are tracked accordingly.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT:

Brian Lavoie or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2459; (202) 586–9478.

Edward Myers, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

I. Background

In DOE/FE Order No. 3769,[1] DOE concluded that "Congress likely did not intend the words "import" and "export" to capture *any* movement of natural gas across the U.S. border, but rather intended to leave some discretion to the Federal Power Commission (the [DOE's] predecessor in administering NGA Section 3, 15 U.S.C. 717b) on that question." [2] Further, DOE concluded that "in-transit shipments returning to the country of origin are not imports or exports within the meaning of section 3 of the Natural Gas Act." [3] Consequently, DOE concluded "that in-transit shipments returning to the country of origin fall outside [DOE's] jurisdiction under NGA section 3." [4] This Notice sets forth procedures for the submission of information concerning in-transit shipments returning to the country of origin.

DOE considers an "in-transit shipment returning to the country of origin" as a shipment of natural gas through the United States between points of a single foreign nation, or through a single foreign nation between points in the United States, that are physical and direct. "Physical" means that the natural gas will be transported between two cross-border points. Thus, exchanges by backhaul or displacement, or other virtual shipments, do not qualify as in-transit shipments for purposes of this Order. "Direct" means that the natural gas must not be diverted for other purposes but must travel a commercially reasonable path between points in one country consistent with an intention merely to transit the other country. And, consistent with the U.S. Customs and Border Patrol regulations concerning in-transit shipments,[5] to qualify as "in-transit" the natural gas must cross points of entry and exit at the United States border within a 30-day period. DOE expects the reporting of in-transit volumes—noting any line losses and/or natural gas that may be consumed as fuel during the transit process—to be made to the Department within 30 days following the month during which the in-transit shipment took place. The purpose of reporting the in-transit volumes is to confirm the non-jurisdictional status of such shipments and to understand the extent to which imports and exports are affecting the domestic natural gas market, and what movements of natural gas are limited to utilizing natural gas infrastructure and not directly impacting natural gas supply or demand. Additional information on reporting volumes is available at: *http://energy.gov/fe/services/natural-gas-regulation/guidelines-filing-monthly-reports.*

---

[1] *Bear Head LNG Corporation & Bear Head LNG, LLC,* DOE/FE Order No. 3769, FE Docket No. 15–14–NG, Opinion and Order Dismissing Application for In-Transit Shipments of Canadian-Sourced Natural Gas and Directing Submission of Information Concerning In-Transit Shipments Returning to the Country of Origin (Feb. 5, 2016).

[2] *Id.* at 8.

[3] *Id.* at 9.

[4] *Id.* at 10.

II. Reporting Requirements for In-Transit Shipments of Natural Gas

a. The entity holding title to the natural gas as it crosses borders shall file with the Office of Regulation and International Engagement, a report due not later than the 30th day of the month following the month of completion of an in-transit shipment. The report must give the following details of each in-transit shipment returning to the country of origin, including cases where natural gas originates from the United States and undergoes in-transit shipment and where natural gas originates in another country and transits the United States: (1) The name of the country that is both the origin and final destination, (2) the name of the country through which the gas is transported before returning to the origin country (the transit country—this may be either the United States or another country) (3) the initial border crossing point, (4) the foreign pipeline at the initial border crossing point, (5) the U.S. pipeline at the initial border crossing point, (6) the final border crossing point, (7) the foreign pipeline at the final border crossing point, (8) the U.S. pipeline at the final border crossing point, (9) the volume of natural gas moving through the final border crossing point, (10) the month and year in which the in-transit shipment took place, (11) the name of the entity that has title to the natural gas during the in-transit movement, (12) the name of the individual who prepared the report, and (13) contact information.

(Approved by the Office of Management and Budget under OMB Control No. 1901–0294.)

b. To show that no deliveries into or out of United States commercial markets have occurred, DOE/FE additionally requests clarification in monthly reports for in-transit shipments specifying the difference in volumes entering the transit country and volumes leaving the transit country and the reason for any such differences, to the extent the information is available.

c. The entity holding title to the natural gas as it crosses borders shall maintain copies of the reports filed under paragraph a., *supra,* for each in-transit shipment returning to the country of origin for a period of one year after completion of the in-transit shipment, and provide that information to DOE/FE upon request.

d. All monthly report filings shall be made to U.S. Department of Energy (FE–34), Office of Fossil Energy, Office of Regulation and International Engagement, P.O. Box 44375, Washington, DC 20026–4375, Attention: Natural Gas Reports. Alternatively, reports may be emailed to *ngreports@hq.doe.gov,* or may be faxed to Natural Gas Reports at (202) 586–6050.

e. Companies that currently use import and export authorizations to report in-transit natural gas shipments may continue to report under their authorizations, but no new authorizations dedicated solely to in-transit shipments will be issued. Companies should not apply for new import and export authorizations if they plan on only conducting in-transit natural gas transactions.

f. Companies may use approved OMB information collection forms, which will be available on DOE/FE's Web site at: *http://www.energy.gov/fe/services/natural-gas-regulation/in-transit.*

g. Companies can submit in-transit reports without docket or order numbers, if not reporting under authorizations permitting both imports and exports.

This Notice is effective immediately upon issuance.

Issued in Washington, DC, on August 23, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–20802 Filed 8–29–16; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1402

RIN 3055–AA12

Releasing Information; Availability of Records of the Farm Credit System Insurance Corporation; Fees for Provision of Information

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) issues a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires the Corporation to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way the Corporation charges fees.

DATES: *Effective date:* This regulation will become effective October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Howard Rubin, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883–4380, TTY (703) 883–4390.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to reflect changes to the FOIA by the FOIA Improvement Act of 2016 (Improvement Act). The Improvement Act addresses a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Improvement Act also updates how fees are assessed.

We revise the regulations as follows:

(1) In § 1402.14,

a. By changing the appeals deadline from 30 days to 90 days in paragraph (b);

b. By adding FCSIC's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (b); and

---

[5] *See* 19 CFR 18.31, 18.2(c)(2).

(2) In § 1402.22, by redesignating existing paragraph (h) as paragraph (k) and adding new paragraphs (h), (i), and (j) with updated information about charging fees.

II. Certain Findings

We have determined that the amendments mandated by the Improvement Act involve agency management and technical changes. Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553(a)(2). Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to agency management and technical changes only and are required by statute, and therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(B) of the APA, an agency may publish regulations in final form when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest. The proposed amendments are required by statute, do not involve Corporation discretion, and provide additional protections to the public through the existing regulations. Thus, notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Corporation hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 1402

Archives and records, Freedom of information, Insurance.

As stated in the preamble, part 1402 of chapter XIV, title 12 of the Code of Federal Regulations is amended as follows:

PART 1402—RELEASING INFORMATION

■ 1. The authority citation for part 1402 is revised to read as follows:

Authority: Secs. 5.58, 5.59 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. 552; 52 FR 10012; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

■ 2. Section 1402.14(b) is revised to read as follows:

§ 1402.14 Response to requests for records.

* * * * *

(b) Within 90 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Chief Financial Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102, and both the letter and envelope shall clearly be marked "FOIA Appeal." An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by Farm Credit System Insurance Corporation personnel. You also have the right to seek dispute resolution services from the Corporation's FOIA Public Liaison, McLean, Virginia 22102, and the Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland 20740–6001.

* * * * *

Subpart C—Fees for Provision of Information

■ 3. Section 1402.22 is amended by redesignating paragraph (h) as paragraph (k) and adding new paragraphs (h), (i), and (j) to read as follows:

§ 1402.22 Fees to be charged.

* * * * *

(h) We will not assess fees if we fail to comply with any time limit under the FOIA or these regulations, and have not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, we may be excused an additional 10 working days before fees are automatically waived under this paragraph (h).

(i) If we determine that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, we may charge fees if we provided a timely, written notice to the requester and discussed with the requester via mail, Email, or telephone (or made at least three good faith attempts to do so) how the requester could effectively limit the scope of the request.

(j) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

* * * * *

Dated: August 24, 2016.

Dale L. Aultman,

Secretary to the Board, Farm Credit System Insurance Corporation.

[FR Doc. 2016–20767 Filed 8–29–16; 8:45 am]

BILLING CODE 6710–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 415 and 417

[Docket No. FAA–2000–7953; Amdt. No(s). 415–6 and 417–5]

RIN 2120–AG37

Licensing and Safety Requirements for Launch; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is publishing this action to correct minor, editorial errors in chapter III, parts 415 and 417. These errors occurred in the Licensing and Safety Requirements for Launch final rule, published in the **Federal Register** on August 25, 2006. That final rule amended the commercial space transportation regulations governing the launch of expendable launch vehicles to address licensing and safety requirements for a launch. In that final rule, the FAA inadvertently made minor errors, which this technical amendment corrects.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action contact René Rey, Regulations and Analysis Division, AST–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7538; email *Rene.Rey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This document is correcting errors that are in 14 CFR 415.35, 415.37, 415.41, 415.55, 417.15, 417.107, 417.121, 417.231, 417.301, 417.303, 417.305, and Appendix A, Appendix E, and Appendix I to part 417. These corrections will not impose any additional restrictions on the persons affected by these regulations. Furthermore, any additional delay in making the regulations correct would be contrary to the public interest. Accordingly, the FAA finds that (i) public comment on these standards prior to promulgation is unnecessary, and (ii) good cause exists to make this rule effective in less than 30 days.

Background

On August 25, 2006, the FAA published a final rule entitled, "Licensing and Safety Requirements for Launch; Final Rule" (71 FR 50508).

In that final rule, the FAA amended commercial space transportation regulations governing the launch of expendable launch vehicles. That action was necessary to codify launch practices at Federal launch ranges and codify rules for launches from a non-Federal launch site. The intended effect of the action was to ensure that the public continued to be protected from the hazards of a launch from either a Federal launch range or a non-Federal launch site.

The final rule contains a more complete discussion of the rule and the events leading up to it.

Technical Amendment

The technical amendment makes the following corrections:

(1) In § 415.35(a), the reference to $_c$c is changed to Ec.

(2) In § 415.37(a)(1), the reference to § 417.117(g) is changed to § 417.117(b)(3).

(3) In § 415.41, the reference to § 417.111(g) is changed to § 417.111(h).

(4) In § 415.55, the reference to § 415.79(a) is changed to § 417.17(b)(2).

(5) In § 417.15(b), the reference to § 405.1 is changed to § 401.5.

(6) In § 417.107(e)(2), the reference to § 417.113(b) is changed to § 417.113(c).

(7) In § 417.121(c), the reference to § 417.113(b) is changed to § 417.113(c).

(8) In § 417.231(a), the reference to § 417.113(b) is changed to § 417.113(c).

(9) In § 417.301(d)(1), duplicate subparagraph (1) is removed.

(10) In § 417.303(j), the reference to § 417.307(g) is changed to § 417.307(f).

(11) In § 417.305(c)(1), duplicate subparagraph (1) is removed.

(12) In Appendix A to part 417, section A417.29(b)(5), the reference to § 417.113(b) is changed to § 417.113(c).

(13) In Appendix E to part 417, section E417.19(e)(2)(vi), the reference to ±dB is changed to ±3 dB.

(14) In Appendix I to part 417, in the introductory paragraph to section I417.1, the reference to § 417.229 is changed to § 417.227.

(15) In Appendix I to part 417, section I417.5(a), the reference to § 417.113(b) is changed to § 417.113(c).

List of Subjects

14 CFR Part 415

Aviation safety, Environmental protection, Space transportation and exploration.

14 CFR Part 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations as follows:

PART 415—LAUNCH LICENSE

■ 1. The authority citation of part 415 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

§ 415.35 [Amended]

■ 2. Amend § 415.35(a) by removing the reference to "$_c$c" and adding in its place "Ec".

§ 415.37 [Amended]

■ 3. Amend § 415.37(a)(1) by removing the reference to "§ 417.117(g)" and adding in its place "§ 417.117(b)(3)".

§ 415.41 [Amended]

■ 4. Amend § 415.41 by removing the reference to "§ 417.111(g)" and adding in its place "§ 417.111(h)".

§ 415.55 [Amended]

■ 5. Amend § 415.55 by removing the reference to "§ 415.79(a)" and adding in its place "§ 417.17(b)(2)".

PART 417—LAUNCH SAFETY

■ 6. The authority citation for part 417 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

§ 417.15 [Amended]

■ 7. Amend § 417.15(b) by removing the reference to "§ 405.1" and adding in its place "§ 401.5".

§ 417.107 [Amended]

■ 8. Amend § 417.107(e)(2) by removing the reference to "§ 417.113(b)" and adding in its place "§ 417.113(c)".

§ 417.121 [Amended]

■ 9. Amend § 417.121(c) by removing the reference to "§ 417.113(b)" and adding in its place "§ 417.113(c)".

§ 417.231 [Amended]

■ 10. Amend § 417.231(a) by removing the reference to "§ 417.113(b)" and adding in its place "§ 417.113(c)".

§ 417.301 [Amended]

■ 11. Amend § 417.301 by removing duplicate paragraph (d)(1).

§ 417.303 [Amended]

■ 12. Amend § 417.303(j) by removing the reference to "§ 417.307(g)" and adding in its place "§ 417.307(f)".

§ 417.305 [Amended]

■ 13. Amend § 417.305 by removing duplicate paragraph (c)(1).

Appendix A to part 417 [Amended]

■ 14. Amend section A417.29(b)(5) of Appendix A to part 417 by removing the reference to "§ 417.113(b)" and adding in its place "§ 417.113(c)".

Appendix E to part 417 [Amended]

■ 15. Amend section E417.19(e)(2)(vi) of Appendix E to part 417 by removing the reference to "±dB" and adding in its place "±3 dB".

Appendix I to part 417 [Amended]

■ 16. Amend Appendix I to part 417 by:

■ a. In section I417.1, removing the reference to "§ 417.229" and adding in its place "§ 417.227".

■ b. In section I417.5(a), removing "§ 417.113(b)" and adding in its place "§ 417.113(c)".

Issued in Washington, DC, on August 23, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016–20813 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 431

[Docket No. FAA–1999–5535; Amdt. No. 431–5]

RIN 2120–AG71

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is publishing this action to correct minor, editorial errors in chapter III, part 431. The errors occurred in the Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations final rule, published in the **Federal Register** on September 19, 2000. That final rule amended commercial space transportation regulations for the launch and reentry of reusable launch vehicles (RLVs) to establish operational requirements for launches of RLVs and to implement the FAA's reentry licensing authority by prescribing requirements for obtaining a license to launch and reenter an RLV, to reenter a reentry vehicle, and to operate a reentry site. In that final rule, the FAA inadvertently made minor errors, which this technical amendment corrects.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action contact Stewart Jackson, Regulations and Analysis Division, AST–300, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7903; email *stewart.jackson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

Section 553(d)(3) of the Administrative Procedure Act requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This document corrects errors in 14 CFR 431.79. These corrections will not impose any additional restrictions on the persons affected by these regulations. Furthermore, any additional delay in making the regulations correct would be contrary to the public interest. Accordingly, the FAA finds that (i) public comment on these standards prior to promulgation is unnecessary, and (ii) good cause exists to make this rule effective in less than 30 days.

Background

On September 19, 2000, the FAA published the "Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulations; Final Rule" (65 FR 56618). The final rule amended commercial space transportation regulations governing the launch and reentry of reusable launch vehicles (RLVs) to establish operational requirements for launches of RLVs and to implement the FAA's reentry licensing authority by prescribing requirements for obtaining a license to launch and reenter an RLV, to reenter a reentry vehicle, and to operate a reentry site. Licensing rules are necessary to respond to advancements in the development of commercial RLV and reentry capability. The action was necessary to fulfill the FAA's safety mandate by limiting risk to the public from RLV and reentry operations.

The final rule contains a more complete discussion of the rule and the events leading up to it.

Technical Amendment

The technical amendment makes the following correction:

(1) In § 431.79(a)(3), the duplicate text "federal" is removed and the phrase "for at" is changed to "from".

List of Subjects in 14 CFR Part 431

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations as follows:

PART 431—LAUNCH AND REENTRY OF A REUSABLE LAUNCH VEHICLE (RLV)

■ 1. The authority citation of part 431 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

§ 431.79 [Amended]

■ 2. Amend § 431.79(a)(3) by removing the duplicate text "federal" and by removing the phrase "for at" and adding in its place "from".

Issued in Washington, DC, on August 23, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016–20815 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

MILLENNIUM CHALLENGE CORPORATION

22 CFR Part 1306

[MCC FR 16–03]

Collection of Debts

AGENCY: Millennium Challenge Corporation.

ACTION: Final rule.

SUMMARY: The purpose of these regulations is to implement statutes which authorize the collection of debts owed to the Federal government, by persons, organizations, or entities including by salary offset, administrative offset, or tax refund offset. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. These regulations are consistent with the Office of Personnel Management regulations on salary offset, and with regulations on administrative offset. Persons with access to the internet may also view this document by going to the *regulations.gov* Web site at: *http://www.regulations.gov/index.cfm.*

DATES: This rule is effective September 24, 2016.

ADDRESSES: You may submit comments by any of the following methods:

Email: Leussinglm@mcc.gov.

Mail paper submissions to the Office of the General Counsel, Millennium Challenge Corporation, 1099 Fourteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Laura M. Leussing, Office of the General Counsel, Millennium Challenge Corporation, telephone 202–521–3680.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act (DCIA), 31 U.S.C. 3720B to 3720E, Public Law 104–134, enacted April 26, 1996) and the Federal Claims Collection Standards, 31 U.S.C. 3701 *et seq.*, require the government to collect money it is owed.

For purposes of the DCIA, debts include overpayments of pay and allowances made to federal employees. 5 U.S.C. 5514. This regulation provides procedures for the collection of debts owed to MCC. MCC adopts the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), 31 CFR parts 900–904 (as revised on November 22, 2000) and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for MCC operations. Nothing in this regulation precludes the use of otherwise authorized collection remedies not contained in this regulation.

Regulatory Analysis

Administrative Procedures Act

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because these rules relate solely to agency procedure and practice (5 U.S.C. 553(b)(3)(A)).

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Regulatory Flexibility Act

MCC, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Order 12866

These regulations are not classified as "significant rules" under Executive Order 12866 because they will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Executive Order 12988

MCC has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

List of Subjects in 22 CFR Part 1306

Administrative practice and procedure, Claims, Debts, Garnishment of wages, Government employee, Hearing and appeal procedures, Pay administration, Salaries, Wages.

In consideration of the foregoing, the Millennium Challenge Corporation amends Chapter XIII of 22 CFR by adding part 1306, to read as follows:

PART 1306—DEBT COLLECTION

Subpart A—General Provisions

1306.1 Purpose.
1306.2 Scope.
1306.3 Definitions.
1306.4 Other procedures or actions.
1306.5 Interest, penalties, and administrative cost.
1306.6 Collection in installments.
1306.7 Designation.
1306.8 Application.

Subpart B—Administrative Wage Garnishment

1306.9 Administrative wage garnishment.

Subpart C—Salary Offset

1306.10 Scope.
1306.11 Coordinating offset with another Federal agency.
1306.12 Notice requirements before offset.
1306.13 Employee response.
1306.14 Request for a hearing for certain debts.
1306.15 Hearings.
1306.16 Procedures for salary offset.
1306.17 Non-waiver of rights by payment.
1306.18 Waiver of indebtedness.
1306.19 Compromise.
1306.20 Suspension.
1306.21 Termination.
1306.22 Discharge.
1306.23 Bankruptcy.
1306.24 Refunds.

Authority: 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 31 CFR part 285; 31 CFR parts 900–904; 5 CFR part 550 subpart K.

Subpart A—General Provisions

§ 1306.1 Purpose.

The regulations in this part prescribe the procedures to be used by the Millennium Challenge Corporation (MCC) in the collection and/or disposal of non-tax debts owed to MCC and to the United States.

§ 1306.2 Scope.

(a) *Applicability of Federal Claims Collection Standards (FCCS).* MCC hereby adopts the provisions of the Federal Claims Collections Standards (31 CFR parts 900–904) and, except as set forth in this part or otherwise provided by law, MCC will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the FCCS.

(b) This part is not applicable to any debt or claim for which collection is explicitly provided for or prohibited under other statutory authorities. This includes, but is not limited to:

(1) MCC claims against another Federal agency, any foreign country or any political subdivision thereof, or any public international organization.

(2) Debts arising out of acquisitions subject to the Federal Acquisition Regulation (FAR) which shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 48 CFR part 32.

(3) Debts arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 which shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published at 41 CFR parts 102–118.

(4) Debts based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, which shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(5) Tax debts.

§ 1306.3 Definitions.

For purposes of this part:

(a) *Administrative offset* means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the person to the United States.

(b) *Administrative wage garnishment* means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt owed to the United States.

(c) *Compromise* means that the creditor agency accepts less than the full amount of an outstanding debt in full satisfaction of the entire amount of the debt.

(d) *Creditor agency* means the Federal agency to which a debt is owed including a debt collection center when acting in behalf of a creditor agency in matters pertaining to the collection of a debt (as provided in 5 CFR 550.1110).

(e) *Debt* or *claim* means an amount of money which has been determined to be owed to the United States from any person. A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

(f) *Debtor* means a person who owes the Federal government money.

(g) *Delinquent debt* means a debt that has not been paid by the date specified in MCC's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or that has not been paid in accordance with a payment agreement with MCC.

(h) *Discharge* means the release of a debtor from personal liability for a debt. Further collection action is prohibited.

(i) *Disposable pay* means the amount that remains from an employee's current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; normal premiums for life and health insurance benefits and such other deductions that are required by law to be withheld, excluding garnishments.

(j) *FCCS* means the Federal Claims Collection Standards published jointly by the Departments of the Treasury and Justice and codified at 31 CFR parts 900–904.

(k) *Person* means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency, Foreign Government, or public international organization.

(l) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of a Federal employee without his or her consent to satisfy a debt owed by that employee to the United States.

(m) *Suspension* means the temporary cessation of active debt collection pending the occurrence of an anticipated event.

(n) *Termination* means the cessation of all active debt collection action for the foreseeable future.

(o) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5522, 5 U.S.C. 5584, 5 U.S.C. 5922, 5 U.S.C. 8346(b), or any other law.

§ 1306.4 Other procedures or actions.

(a) Nothing contained in this part is intended to require MCC to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this part is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this part is intended to deter MCC from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of MCC to comply with any provision in this part shall not serve as defense to the debt.

§ 1306.5 Interest, penalties, and administrative costs.

Except as otherwise provided by statute, contract or excluded in accordance with the FCCS, MCC will assess:

(a) Interest on delinquent debts in accordance with 31 CFR 901.9.

(b) Penalties at the rate of 6 percent a year or such other rate as authorized by law on any portion of a debt that is delinquent for more than 90 days.

(c) Administrative costs to cover the costs of processing and calculating delinquent debts.

(d) Late payment charges under paragraphs (a) and (b) of this section shall be computed from the date of delinquency.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(f) MCC shall consider waiver of interest, penalties and/or administrative costs in accordance with the FCCS, 31 CFR 901.9(g).

§ 1306.6 Collection in installments.

(a) Whenever feasible, and except as required otherwise by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this part, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset, including salary offset, or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum or the amount of debt exceeds 15 percent of disposable pay for an officially established pay interval collection must be made in regular installments. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim within three years, and in the case of a current MCC employee, installment repayment plans must be made over a period not greater than the anticipated period of employment, except as provided in paragraph (b) in this section. However, the amount deducted for any period under this section and § 1306.16 may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court.

(b) If the employee retires or resigns or if his or her employment ends before collection of the debt is completed, MCC may collect the debt from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt. Following the employee's separation, MCC may collect any later payments of any kind that are due to the former employee from the United States to the extent necessary to liquidate the debt.

§ 1306.7 Designation.

The Chief Financial Officer is delegated authority and designated to perform all the duties for which head of the agency is responsible under the forgoing statutes and joint regulations. The authority delegated hereunder may be further delegated by the Chief Financial Officer subject to applicable laws, regulations and MCC policies.

§ 1306.8 Application.

(a) MCC shall aggressively collect claims and debts in accordance with this part and applicable law.

(b) In accordance with the FCCS:

(1) MCC will transfer to the Department of the Treasury, Financial Management Service (FMS) any past due, legally enforceable non-tax debt that has been delinquent for 180 days or more so that FMS may take appropriate action to collect the debt or take other appropriate action in accordance with applicable law and regulation; and

(2) MCC may transfer any past due, legally enforceable debt that has been delinquent for fewer than 180 days to FMS for collection in accordance with applicable law and regulation. (See 31 CFR part 285).

Subpart B—Administrative Wage Garnishment

§ 1306.9 Administrative wage garnishment.

MCC hereby adopts the administrative wage garnishment rules issued by the Department of the Treasury at 31 CFR 285.11.

Subpart C—Salary Offset

§ 1306.10 Scope.

(a) This subpart sets forth MCC's procedures for the collection of a Federal employee's current pay by salary offset to satisfy certain debts owed to the United States.

(b) This subpart applies to:

(1) Current employees of MCC and other agencies who owe debts to MCC;

(2) Current employees of MCC who owe debts to other agencies.

(c) This subpart does not apply to:

(1) Debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States.

(2) Any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108); or

(3) Any other debts excluded by the Federal Claims Collections Standards (31 CFR parts 900–904) or 31 CFR part 285.

(d) This part does not preclude an employee from requesting waiver of the debt, if waiver is available under subpart C of this part or by other regulation or statute.

(e) Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under § 1306.18 or other regulations or statutes.

§ 1306.11 Coordinating offset with another Federal agency.

(a) When MCC is owed a debt by an employee of another agency, MCC shall provide the agency with a written certification that the debtor owes MCC a debt (including the amount and basis of the debt and the due date of payment) and that MCC has complied with this part.

(b) When another agency is owed the debt, MCC may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such request must be accompanied by a certification that the person owes the debt (including the amount and basis of the debt and the due date of payment) and that the agency has complied with its regulations as required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

§ 1306.12 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency first provides the employee with written notice that he/she owes a debt to the Federal Government at least 30 calendar days before salary offset is to be initiated. When MCC is the creditor agency this notice of intent to offset an employee's salary shall be hand-delivered or sent by certified mail to the most current address that is available. The written notice will state:

(1) That MCC has reviewed the records relating to the claim and has determined that a debt is owed, its origin and nature, and the amount of the debt;

(2) The intention of MCC to collect the debt by means of deduction from the employee's current disposable pay account until the debt, all accumulated interest, penalties and administrative costs are paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of MCC's policy concerning interest, penalties and administrative costs, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy all records of MCC pertaining to the debt claimed or to receive copies of such records if personal inspection is impractical;

(6) If not previously provided, the opportunity (under terms agreeable to MCC) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and MCC, and documented in MCC's files;

(7) The employee's right to a hearing conducted by a hearing official (an administrative law judge, or alternatively, an individual not under the supervision or control of MCC, but in each case arranged by MCC) with respect to the existence and amount of the debt claimed, or the repayment schedule, so long as a petition is filed by the employee in accordance with this part;

(8) The name, address and telephone number of an official to whom questions and correspondence regarding this notice may be directed;

(9) The method and time period for requesting a hearing;

(10) That the timely filing of a petition for a hearing as prescribed by this part will stay the commencement of collection proceedings;

(11) The name and address of the office to which the petition for hearing should be sent;

(12) That MCC will initiate certification procedures to implement a salary offset, as appropriate, (which may not exceed 15 percent of the employee's disposable pay) not less than 30 calendar days from the date of delivery of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representation, or evidence may subject the employee to disciplinary procedures (5 U.S.C. Chapter 75, 5 CFR part 752 or other applicable statutes or regulations); penalties (31 U.S.C. 3729–3731 or other applicable statutes or regulations); or criminal penalties (18 U.S.C. 286, 287, 1001, and 1002 or other applicable statutes or regulations);

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) MCC is not required to provide prior notice to an employee when the following adjustments are made by MCC to an MCC employee's pay:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment,

and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting the adjustment; or

(3) Any adjustment to collect a debt of $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature of the amount of the adjustment and a point of contact for contesting the adjustment.

§ 1306.13 Employee response.

(a) *Voluntary repayment agreement.* An employee may submit a request to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 1306.12 to the official identified in § 1306.12(a)(8). The agreement must be in writing signed by both the employee and the appropriate official within MCC. Acceptance of such an agreement is discretionary with the Agency. An employee who enters into such an agreement may, nevertheless, seek a waiver under § 1306.18.

(b) *Reconsideration.* (1) An employee may seek a reconsideration of MCC's determination regarding the existence and/or amount of the debt. The request must be made within 7 days of receipt of notice under § 1306.12 to the official identified in 1306.12(a)(8). Within 20 days of receipt of this notice, the employee must submit a detailed statement of reasons for reconsideration that must be accompanied by supporting documentation.

(2) An employee may seek a reconsideration of MCC's proposed offset schedule. The request must be made within 7 days of receipt of notice under § 1306.12 to the official identified in § 1306.12(a)(8). Within 20 days of receipt of this notice, the employee must submit an alternative repayment schedule accompanied by a detailed statement, supported by documentation, evidencing financial hardship resulting from MCC's proposed schedule. Acceptance of the request is at MCC's discretion. MCC will notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 1306.14 Request for a hearing for certain debts.

(a) Except as provided in paragraphs (d) and (e) of this section, an employee must file a request that is received by the official identified in the notice provided pursuant to § 1306.12(a)(11) not later than 15 calendar days from the date of MCC's notice if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) MCC's proposed offset schedule.

(b) The request must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses, if any, which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the request should state the objection and the reasons for it.

(c) The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(d) If the employee files a request for a hearing later than the required 15 calendar days as described in paragraph (a) of this section, MCC may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee otherwise has actual notice of the filing deadline).

(e) If the employee files a timely request for reconsideration pursuant to § 1306.13(b), the employee must file a request for a hearing by the official identified in the notice provided pursuant to § 1306.12(a)(11) not later than 15 calendar days from the date of MCC's written decision concerning the reconsideration request.

(f) An employee waives the right to a hearing and will have his or her pay offset if the employee fails to file a petition for a hearing in accordance with this section.

§ 1306.15 Hearings.

(a) If an employee timely files a request for a hearing under § 1306.14, pursuant to 5 U.S.C. 5514(a)(2), the hearing official shall select the time, date, and location of the hearing.

(b) Hearings shall be conducted by a hearing official not under the supervision or control of MCC or an administrative law judge.

(c) *Procedure.* (1) After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (*e.g.,* when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a decision based upon a review of the available written record.

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart. Witnesses who provide testimony will do so under oath or affirmation.

(5) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, or the date salary offset will commence, if applicable.

(6) Failure to appear. In the absence of good cause shown (*e.g.,* excused illness), an employee who fails to appear at an oral hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. The hearing official shall schedule a new hearing date upon the request of MCC's representative when good cause is shown.

(d) A hearing official's decision is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 only.

§ 1306.16 Procedures for salary offset.

Unless otherwise provided by statute, regulation, or contract, the following procedures apply to salary offset:

(a) *Method.* Salary offset will be made by deduction at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

(b) *Source.* The source of salary offset is current disposable pay.

(c) *Types of collection.* (1) *Lump sum payment.* Ordinarily debts will be collected by salary offset in one lump sum if possible. However, if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, the collection by salary offset must be made in installment deductions, except as provided by other laws or regulations or unless the employee has agreed in writing to a greater amount.

(2) *Installment deductions.* (i) The size of installment deductions must bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the size of the deduction will be that necessary to liquidate the debt in no more than 1 year. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, except as provided by other laws or regulations or unless the employee has agreed in writing to a greater amount.

(ii) Installment payments of less than $50 per pay period will be accepted only in unusual circumstances such as when that amount exceeds 15% of disposable pay.

(iii) Installment deductions should be sufficient in size and frequency to liquidate the Government's claim within three years and must be made over a period not greater than the anticipated period of employment.

§ 1306.17 Non-waiver of rights by payments.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (of all or a portion of a debt) collected under this part will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 1306.18 Waiver of indebtedness.

(a) An employee may request a waiver of indebtedness. When an employee makes a request under a statutory right, further collection may be stayed pending an administrative determination on the request. During the period of any suspension, interest, penalties and administrative charges may be held in abeyance. MCC will not duplicate, for purposes of salary offset, any of the notices/procedures already provided the debtor prior to a request for waiver.

(b) Waiver of indebtedness is an equitable remedy and as such must be based on an assessment of the facts involved in the individual case under consideration. The burden is on the employee to demonstrate that the applicable waiver standard has been met in accordance with MCC's Policy on Waivers of Indebtedness.

(c) A debtor requesting a waiver shall do so in writing to the official identified in § 1306.12(a)(8) and within the timeframe stated within the initial notice sent under § 1306.12. The debtor's written response shall state the basis for the dispute and include any relevant documentation in support.

(d) While a waiver request is pending, MCC may suspend collection, including the accrual of interest and penalties, on the debt if MCC determines that suspension is in the agency's best interest or would serve equity and good conscience.

§ 1306.19 Compromise.

MCC may attempt to effect a compromise with respect to the debt in accordance with the process and standards set forth in the FCCS, 31 CFR part 902.

§ 1306.20 Suspension.

Any suspension of collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1–903.2.

§ 1306.21 Termination.

Any termination of a collection action shall be made in accordance with the standards set forth in the FCCS, 31 CFR 903.1 and 903.3–903.4.

§ 1306.22 Discharge.

Once a debt has been closed out for accounting purposes and collection has been terminated, the debt is discharged. MCC must report discharged debt as income to the debtor to the Internal Revenue Service per 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 1306.23 Bankruptcy.

A debtor should notify MCC at the contact office provided in the original notice of the debt, if the debtor has filed for bankruptcy. MCC will require documentation from the applicable court indicating the date of filing and type of bankruptcy. Pursuant to the laws of bankruptcy, MCC will suspend debt collection upon such filing unless the automatic stay is no longer in effect or has been lifted. In general, collection of a debt discharged in bankruptcy shall be terminated unless otherwise provided for by bankruptcy law.

§ 1306.24 Refunds.

(a) MCC will refund promptly to the appropriate individual amounts offset under this part when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) MCC is directed by an administrative or judicial order to make a refund.

(b) Refunds do not bear interest unless required or permitted by law or contract.

Dated: August 25, 2016.

Laura M. Leussing,

Assistant General Counsel, Millennium Challenge Corporation.

[FR Doc. 2016–20800 Filed 8–29–16; 8:45 am]

BILLING CODE 9211–03–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 19, 20, 21, 27, and 28

[Docket No. TTB–2013–0005; T.D. TTB–140; Re: Notice No. 136]

RIN 1513–AB59

Reclassification of Specially Denatured Spirits and Completely Denatured Alcohol Formulas and Related Amendments

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is amending its regulations concerning denatured alcohol and products made with industrial alcohol. The amendments eliminate outdated specially denatured spirits formulas from the regulations, reclassify some specially denatured spirits formulas as completely denatured alcohol formulas, and issue some new general-use formulas for manufacturing products with specially denatured spirits. The amendments remove unnecessary regulatory burdens on the industrial alcohol industry, as well as on TTB, and align the regulations with current industry practice. The amendments also make other improvements and clarifications, as well as a number of minor technical changes and corrections to the regulations.

DATES: This final rule is effective October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Karen Welch, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 046; email *IndustrialAlcoholRegs@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Background

Internal Revenue Code

Chapter 51 of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. chapter 51, contains excise tax and related provisions concerning distilled spirits used for both beverage and nonbeverage purposes. The IRC imposes an excise tax rate of $13.50 per proof gallon on distilled spirits (26 U.S.C. 5001). Under section 5006(a) of the IRC (26 U.S.C. 5006(a)) the excise tax on distilled spirits is generally determined at the time the distilled spirits are withdrawn from the bonded premises of a distilled spirits plant.

However, section 5214(a) of the IRC authorizes, subject to regulations prescribed by the Secretary of the Treasury, the following two types of spirits to be withdrawn free of tax:

- Spirits that have been "denatured" by the addition of materials that make the spirits unfit for beverage consumption; and
- Undenatured spirits for certain governmental, educational, medical, or research purposes.

Section 5214(a)(1) of the IRC permits the withdrawal of denatured spirits free of tax for:

- Exportation;
- Use in the manufacture of a definite chemical substance, where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or
- Any other use in the arts or industry, or for fuel, light, or power, except that, under 26 U.S.C. 5273(b), denatured spirits may not be used in the manufacture of medicines or flavors for internal human use where any of the spirits remain in the finished product, and, under section 5273(d), denatured spirits may not be withdrawn or sold for beverage purposes.

The IRC authorizes the Secretary of the Treasury to prescribe regulations regarding the production, warehousing, denaturing, distribution, sale, export, and use of industrial alcohol in order to protect the revenue (26 U.S.C. 5201), and to regulate materials that are suitable to denature distilled spirits (26 U.S.C. 5241 and 5242). Section 5242 states that denaturing materials shall be such as to render the spirits with which they are admixed unfit for beverage or internal medicinal use and that the character and quantity of denaturing materials used shall be as prescribed by the Secretary by regulations. Furthermore, section 5273(a) of the IRC requires that any person using specially denatured spirits (which is defined in the following section of this document) to manufacture products:

> * * * shall file such formulas and statements of process, submit such samples, and comply with such other requirements, as the Secretary shall by regulations prescribe, and no person shall use specially denatured distilled spirits in the manufacture or production of any article until approval of the article, formula, and process has been obtained from the Secretary.[1]

Regulation of Denatured Spirits

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 of the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), "Alcohol and Tobacco Tax and Trade Bureau," dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Regulations pertaining specifically to denatured spirits are found in 27 CFR part 20 (Distribution and use of denatured alcohol and rum) and part 21 (Formulas for denatured alcohol and rum). Certain provisions in TTB's regulations in 27 CFR part 19 (Distilled spirits plants), part 27 (Importation of distilled spirits, wines, and beer), and part 28 (Exportation of alcohol) also concern denatured spirits. Denatured spirits are spirits to which denaturants—which are materials that make alcoholic mixtures unfit for beverage or internal human medicinal use—have been added in accordance with 27 CFR part 21. TTB approves denaturants if the denaturants: (1) Make the spirits unfit for beverage or internal human medicinal use (26 U.S.C. 5242 and 27 CFR 21.11), (2) are adequate to protect the Federal excise tax revenue (27 CFR 21.91), and (3) are suitable for the intended use of the denatured spirits (26 U.S.C. 5242).[2]

There are two types of denatured spirits: Completely denatured alcohol (C.D.A.) and specially denatured spirits (referred to as "S.D.S." for purposes of this preamble). C.D.A. jeopardizes the revenue less than S.D.S. does—first, C.D.A. is more offensive to the taste than S.D.S. and thus C.D.A. is less likely to be used for beverage purposes, and second, it is more difficult to separate potable alcohol from C.D.A. than it is from S.D.S. For these reasons, the withdrawal and use of C.D.A. are subject to less stringent regulatory oversight than are the withdrawal and use of S.D.S.

Title 27 CFR 20.41 provides that permits are required to withdraw, deal in, or use S.D.S. The regulations also require that dealers and users of S.D.S. maintain specified records and retain invoices (see 27 CFR 20.262 through 20.268). Under § 20.264(b), users of S.D.S. are required to submit an annual report to TTB, and, under § 20.262(d), a dealer, as defined in 27 CFR 20.11, when requested by TTB, must submit a required accounting of each formulation of new and recovered S.D.S. In contrast, under 27 CFR 20.141, no permits are required to use or distribute C.D.A. (with the exception of recovery for reuse). A person that receives, packages, stores, disposes of, or uses C.D.A. is required to maintain records only when specifically requested by TTB (see 27 CFR 20.261). The regulations do not provide any reporting requirements for persons that use or deal in C.D.A.

The regulations prescribe formulas for C.D.A. and for S.D.S. C.D.A. generally may be sold and used for any purpose (§ 20.141), with the exception that C.D.A. denatured in accordance with Formula No. 20 is restricted to fuel use (27 CFR 21.24). In contrast, S.D.S., which is generally used as a raw material or ingredient in the manufacture of other products (termed "articles"), may not be used for any purpose not specifically authorized in the regulations. The authorized purposes are categorized within "use codes," which are published in the regulations in 27 CFR part 21.

Manufacture of Articles With Denatured Spirits

Both C.D.A. and S.D.S. may be used to manufacture articles, which are defined in section 5002(a)(14) of the IRC (26 U.S.C. 5002(a)(14)) as "any substance in the manufacture of which denatured distilled spirits are used." The manufacture of articles with C.D.A. is generally unregulated. By contrast, the manufacture of articles with S.D.S. is strictly regulated under 27 CFR part 20, in accordance with sections 5271 through 5275 of the IRC (26 U.S.C. 5271–5275). A significant aspect of this regulation is the requirement for prior TTB approval of all articles made with S.D.S. Such approval is mandated by law in section 5273(a) of the IRC (26 U.S.C. 5273(a)), which states, "* * * no person shall use specially denatured distilled spirits in the manufacture or production of any article until approval of the article, formula, and process has been obtained from the Secretary."

---

[1] Other sections of the IRC relating to denatured spirits set forth requirements pertaining to the taxation and manufacture of distilled spirits, the withdrawal of distilled spirits free of tax or without payment of tax, the importation and exportation of distilled spirits, the issuance of permits for industrial alcohol users and dealers, the sale and use of industrial alcohol, and the recovery of potable alcohol from industrial alcohol (see 26 U.S.C. 5002 through 5008, 5061, 5062, 5101, 5111, 5112, 5131, 5132, 5181, 5204, 5214, 5232, 5235, 5271, 5273, and 5313).

[2] In most cases, spirits used for industrial purposes are "alcohol," which in this context means a type of spirits distilled at more than 160 degrees of proof and substantially neutral in character, lacking the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin. (27 CFR 19.487(a)(1).)

TTB approval of articles takes two forms. First, TTB approves specific, proprietary formulas and processes for articles, submitted by manufacturers on TTB Form 5150.19, Formula and/or Process for Article Made with Specially Denatured Spirits. (TTB encourages industry members to submit this form electronically using Formulas Online, which is available at *www.ttb.gov.*) Second, "general-use formulas," which TTB generally approves by publishing them in the regulations in 27 CFR part 20, are approved formulas for articles. General-use formulas may be used by any manufacturer that has a TTB permit to use S.D.S. in the manufacture of articles. Each general-use formula authorizes the production of only a specific type of article. Under § 20.111, manufacturers of articles produced pursuant to general-use formulas are not required to obtain specific formula approval from TTB on TTB Form 5150.19. Thus, the regulatory burden is lighter on manufacturers producing articles pursuant to general-use formulas than on manufacturers producing articles pursuant to other formulas that prescribe S.D.S. (In fiscal year 2015, TTB received 1,163 formula applications on TTB Form 5150.19.)

Terminology

TTB is providing the following definitions to assist in comprehension of this final rule:

- An *article* is any substance or preparation manufactured using denatured spirits.
- *Completely Denatured Alcohol (C.D.A.)* is alcohol that has been denatured under a formula specified in subpart C of 27 CFR part 21. Only a registered distilled spirits plant may produce C.D.A. TTB and industry generally refer to formulations of C.D.A. by the formula number. For example, a formulation produced in accordance with C.D.A. Formula No. 20 is simply referred to as "C.D.A. 20." To reflect the common parlance, this same shorthand is used throughout this document.
- A *formula* is an instruction for manufacturing a product, and is analogous to a recipe that a cook follows. This document refers to two broad types of formulas: denatured alcohol formulas and article formulas. Denatured alcohol formulas specify the instructions for producing either S.D.S (as specified in 27 CFR part 21 subpart D) or C.D.A. (as specified in 27 CFR part 21 subpart C). Article formulas include both formulas approved individually by TTB on TTB Form 5150.19 and general-use formulas (as specified in 27 CFR 20.112 through 20.119).
- A *formulation* is a physical product manufactured in accordance with a formula, and is analogous to a cooked meal that has been prepared using a recipe. The word "formulation" can refer to S.D.S., C.D.A., or an article.
- A *general-use formula* is a formula for making a certain type of article that is prescribed by 27 CFR 20.112 through 20.119, approved by TTB as an alternate method, or published as a TTB ruling. Specific formula approval by TTB on Form 5150.19 is not required for an article made pursuant to a general-use formula.
- *Specially Denatured Alcohol (S.D.A)* is alcohol that has been denatured following a formula specified in subpart D of 27 CFR part 21. A formulation of S.D.A. may be used only for the uses specified for the corresponding formula in 27 CFR part 21.
- *Specially Denatured Rum (S.D.R.)* is a rum that has been denatured following the formula specified in subpart D of 27 CFR part 21. S.D.R. may be used only for the uses specified for that formula in 27 CFR part 21.
- *Specially Denatured Spirits (S.D.S.)* are specially denatured alcohol (S.D.A.) and/or specially denatured rum (S.D.R.). Only a registered distilled spirits plant may produce S.D.S. TTB and industry generally refer to formulations of S.D.S. by the formula number. For example, a formulation produced in accordance with S.D.A. Formula No. 40–B is simply referred to as "S.D.A. 40–B." To reflect the common parlance, this same shorthand is used throughout this document.

Notice of Proposed Rulemaking

On June 27, 2013, TTB published Notice No. 136 in the **Federal Register** (78 FR 38628) to propose several changes to the regulations to ease burdens on industry members and on TTB, as well as other improvements and clarifications. While a more detailed description of those proposals can be found in Notice No. 136, TTB provides a general summary below:

Removal of Certain S.D.A. Formulas

In Notice No. 136, TTB proposed to remove, from part 21, 16 S.D.A. formulas that do not appear to be in use—specifically, S.D.A. Formula Nos. 2–C, 3–B, 6–B, 17, 20, 22, 23–F, 27, 27–A, 27–B, 33, 38–C, 39, 39–A, 42, and 46. In addition to proposing to remove those 16 formulas, TTB also proposed to remove references to those formulas from part 21, as well as references to, and any specifications for, denaturants that are prescribed by those 16 formulas and are not mentioned in other formulas.

Reclassification of Certain S.D.A. Formulas as C.D.A. Formulas

TTB identified two S.D.A. formulas that TTB could reclassify as C.D.A. formulas, because it would be very difficult to separate the denaturant from the alcohol in the resulting formulation. TTB proposed to reclassify S.D.A. Formula Nos. 12–A and 35 as C.D.A. formulas by removing 27 CFR 21.40 and 21.61 and by adding new 27 CFR 21.21a and 21.25 respectively. TTB also proposed to remove other references to these two S.D.A. formulas from part 21.

General-Use Formula for Articles Made With Certain S.D.A. Formulations

TTB also determined that it would be appropriate to issue a new, multi-purpose general-use formula for any appropriate articles made with one or more of 15 S.D.A. formulations that TTB identified as being appropriate for the general-use formula. Such a general-use formula would alleviate paperwork burdens for both industry members and TTB, because the manufacturer of an article produced in accordance with a general-use formula is not required to obtain specific formula approval from TTB on Form 5150.19. Furthermore, because it would be difficult to separate the alcohol from the articles produced using one or more of those 15 S.D.A. formulations, the revenue would not be jeopardized. Accordingly, TTB proposed to specify S.D.A. Formula Nos. 1, 3–A, 13–A, 19, 23–A, 23–H, 30, 32, 35–A, 36, 37, 38–D, 40, 40–A, and 40–B in a multi-purpose general-use formula in new 27 CFR 20.120.

General-Use Formulas, With Conditions, for Certain Articles Made With S.D.A. Formulas

TTB also identified three S.D.A. formulations that may be used as ingredients, subject to certain conditions, in certain general-use formulas. Accordingly, TTB proposed:

- To allow the use of S.D.A. 18 in a vinegar general-use formula in new 27 CFR 20.121 (which would have as a condition that the ethyl alcohol either loses its identity in the vinegar-making process or only residual ethyl alcohol within the limit specified in 27 CFR 20.104 remains);
- To allow the use of S.D.A. 39–C in a new general-use formula in 27 CFR 20.122 (which would have as a condition that each gallon of finished product contain not less than 2 fluid ounces of perfume material); and

- To provide for the use of S.D.A. 40–C in a pressurized container general-use formula in new 27 CFR 20.123 (which would have as a condition that the formula only be used in the manufacture of products that will be packaged in pressurized containers in which the liquid contents are in intimate contact with the propellant and from which the contents are not easily removable in liquid form).

Only the uses that are currently approved for the corresponding S.D.A. formula in part 21 would be allowed under each of these three new general-use formulas.

TTB also proposed to remove 27 CFR 20.103 from the regulations. Section 20.103 requires that articles made with S.D.A. 39–C contain at least two fluid ounces of perfume material in each gallon of finished product. Because this condition will appear in the general-use formula specified in the new § 20.122, and because the new general-use formula covers all articles made with S.D.A. 39–C, the condition is no longer needed in § 20.103.

Additional Changes to Formulas

In addition to the changes discussed above, TTB proposed to:

- Create a general-use formula for duplicating fluids and ink solvents specifying S.D.A. 1, 3–A, and 3–C in new 27 CFR 20.124; and
- Amend the proprietary solvents general-use formula (27 CFR 20.113) to also allow the use of S.D.A. 3–C in making proprietary solvents.

TTB also proposed to remove benzene—which the U.S. Environmental Protection Agency (EPA) has designated in its regulations as a hazardous air pollutant under the Clean Air Act (40 CFR 61.01(a))—as a denaturant prescribed in S.D.A. Formula No. 2–B (27 CFR 21.33), and to exclude benzene from the denaturants prescribed by the new C.D.A. Formula No. 12–A in proposed § 21.21a. While TTB also proposed to remove benzene from the list of authorized denaturants in 27 CFR 21.151, TTB did not propose to remove the specifications for benzene contained in 27 CFR 21.97. TTB will remove § 21.97 in this rule because the benzene specifications are no longer needed.

Other Substantive Changes

In addition to the changes to the S.D.S. and C.D.A formulas, denaturant specifications, and general-use formulas, TTB also proposed the following changes to the regulations to provide greater flexibility to industry members:

- To clarify the regulations relating to the destruction of S.D.S. or recovered alcohol, TTB proposed to amend 27 CFR 20.222 to state that destruction of recovered material that is not sufficiently denatured to meet the formula specifications of an article must be done by the original manufacturer, a distilled spirits plant, or a facility that possesses an S.D.S. dealer's permit.
- TTB proposed to amend 27 CFR 20.63 to allow any permittee to adopt, for use at any of its plants, any formula previously approved for use at another of its plants, or any formula previously approved for its parent or wholly-owned subsidiary.
- TTB proposed to amend § 20.102 to except bay rum, alcoholado, and alcoholado-type toilet waters produced under an approved formula and endorsed "For Export Only" from the requirement that they be produced from the materials specified in that section.
- To make the regulations on reagent alcohol less restrictive, TTB proposed to amend 27 CFR 20.117 to allow permittees who have a legitimate use for reagent alcohol in manufacturing to receive it for that purpose, but only from distilled spirits plants and S.D.S. user or dealer permittees. TTB also proposed to amend § 20.117(a) to provide for treatment of reagent alcohol as S.D.A. when distributed for use in manufacturing.
- TTB proposed to amend 27 CFR 20.134 to allow containers of articles to either (1) bear a label or (2) have the required information etched or printed directly on the containers, since the technology now exists to etch or print information directly on containers.
- TTB proposed to amend the regulations by adding a new 27 CFR 20.183 which would allow for the exportation of most S.D.S. formulations by dealers provided that the S.D.S. conforms to a formula specified in part 21 of the TTB regulations, that the exportation is to a country, the laws of which allow the importation of such spirits, and that the dealer notifies TTB of the exportation.
- TTB proposed to add new § 20.193 (27 CFR 20.193) to allow for the export of articles that would not be approved for domestic distribution. Previously, TTB and its predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), provided for such exports on individual bases as alternate methods or procedures.

Clarifying and Technical Changes

In Notice No. 136, TTB proposed several technical changes, as well as changes to clarify the regulations, and TTB is finalizing those changes in this rulemaking.

Comments Received and TTB Responses

TTB received a total of four comment submissions in response to Notice No. 136, from Archer Daniels Midland Company (ADM) (Comment 1), an individual who works in industry (Comment 2), Videojet Technologies, Inc. ("Videojet") (Comments 3a through 3d), and the Renewable Fuels Association (RFA) (Comment 4). All comments appear on "*Regulations.gov*," the Federal Rulemaking portal, at *http://www.regulations.gov,* in Docket No. TTB–2013–0005.

Comment 1

ADM's comment submission (Comment 1) included nine specific comments. One of those comments expressed support for the clarification regarding the importation of denatured spirits and fuel alcohol in § 27.222. ADM's eight other comments, and TTB's responses, are as follows:

- *ADM comment:* ADM stated that the current general-use formulas (§§ 20.112 through 20.118) "are prescriptive in that they detail what denaturants and amounts must be added to the applicable S.D.A.," but the general-use formula proposed in § 20.120 is "less prescriptive in that it only states that an additional denaturant must be added." ADM noted their concern that the proposed formula could be misinterpreted, which would result in inadvertent noncompliance.

TTB response: General-use formulas do not specify denaturants that must be used in producing an article. Rather, they specify which type of S.D.A. must be used to produce the article. It is the S.D.A. that contains the denaturants, per the S.D.A. formula provided in 27 CFR part 21. Some of the general-use formulas also specify additional ingredients that must be used, but not all of the existing general use-formulas specify exact quantities of additional ingredients. For example, the existing tobacco flavor general-use formula (§ 20.114) only requires the use of S.D.A. Formula No. 4 or S.D.R. Formula No. 4 and "sufficient flavors," and the existing ink general-use formula in § 20.115 only requires the use of one of several specified S.D.A. formulations and "sufficient pigments, dyes, or dyestuffs." The permissiveness of the general-use formula proposed in the new § 20.120 is consistent with TTB's longstanding approach. This approach provides manufacturers with a degree of flexibility in producing articles—which minimizes the paperwork burden imposed on both manufacturers and TTB—while still protecting the revenue. Therefore, TTB will finalize the general-use formula in § 20.120 as proposed.

- *ADM comment:* ADM noted that the names of existing general-use formulas describe the type of article that is produced in accordance with the general-use formula. ADM recommended that TTB assign a similar type of name to the general-use formula proposed in new § 20.120.

TTB response: Many kinds of articles may be produced in accordance with the general-use formula proposed in new § 20.120, making it impractical to assign a name to the general-use formula based on the resulting articles. However, TTB has reconsidered calling the general-use formula the "General-use formula for articles made with S.D.A. 1, 3–A, 13–A, 19, 23–A, 23–H, 30, 32, 35–A, 36, 37, 38–D, 40, 40–A, or 40–B," and instead has determined that "Multi-purpose general-use formula" is less cumbersome. Accordingly, TTB has changed the name of that general-use formula to "Multi-purpose general-use formula" in this document.

- *ADM comment:* ADM believes that the lists of "Authorized Uses" for the various S.D.A. formulas 27 CFR part 21—which are listed in § 21.141 and in section (b) of each section of part 21 subpart D—are overly lengthy, overly specific, and in some cases redundant or repetitive. ADM asked that TTB limit the "Authorized Uses" lists to more general usage categories such as "ingredient in personal care product" or "process aid in food production."

TTB response: Though TTB sees the value in revising the lists of "Authorized Uses," such a revision is outside the scope of the regulatory changes published in the Notice No. 136. TTB will consider such revisions for a future rulemaking.

- *ADM comment:* ADM echoed one of the comments made in response to Notice No. 83, a comment that TTB discussed in Notice No. 136. Specifically, the comments relate to TTB's specification of exact amounts of denaturants in C.D.A. and S.D.A. formulas. ADM noted that "it is not practical to expect and impossible to ensure that the exact amounts of denaturants have been added," and asked TTB to "provide clarification in the regulations regarding acceptable variability in denaturant addition" by using "action levels" in enforcement or applying standard rounding rules.

TTB response: TTB applies a plus or minus five percent tolerance when analyzing samples of S.D.A., C.D.A., and articles to determine compliance with the formula. TTB also employs standard rounding rules when reviewing results of analyses, where a number is rounded up if the first digit after the last significant digit is "5" or more, and a number is rounded down if the first digit after the last significant digit is "4" or less. For example, if TTB were examining an article made pursuant to a formula specifying a mixture of 90 percent by volume S.D.A. 3–C and 10 percent by volume *n*-propyl acetate, taking into consideration the plus or minus five percent tolerance, the acceptable range of S.D.A. 3–C in the article would be 85.5–94.5 percent by volume. If laboratory analysis of the article showed that the article contains 85.45 percent S.D.A. 3–C, TTB would round that result to 85.5 percent, which would be in compliance with the formula. If laboratory analysis showed that the article contains 85.44 percent S.D.A. 3–C, TTB would round that result to 85.4 percent, which would be out of compliance with the formula.

Accordingly, TTB is adding a new paragraph (d) to both 27 CFR 21.21 and 21.31 to state the analytical tolerance and the use of standard rounding rules. TTB also applies the plus or minus five percent tolerance and standard rounding rules when analyzing samples of articles that were made pursuant to a formula that specified an exact amount of an ingredient, including denatured spirits. Accordingly, TTB is revising 27 CFR 20.132 to state the analytical tolerance and the use of standard rounding rules. TTB believes that the plus or minus five percent tolerance and the application of standard rounding rules provide for a reasonable degree of variation.

- *ADM comment:* ADM asked TTB to consider modifying labeling requirements as described in 27 CFR 20.134, concerning the labeling of articles, and 20.146, concerning labels on bulk containers of C.D.A., because "it is not general practice to label transport containers with product name, manufacturer name, etc.," and "in the case of rail and truck tankers, containers are placarded per [Department of Transportation (DOT)] regulations and product information is listed on shipping paperwork. Any identification beyond that stipulated by the DOT for first responders could easily decrease the security of the product in transit."

TTB response: As ADM stated, TTB did not specifically address this labeling issue in Notice No. 136. Therefore, TTB cannot make substantive changes to those sections in this document, as they are outside the scope of this rulemaking. However, as ADM noted, §§ 20.134 and 20.146 do not specifically address large transport containers such as truck tankers, railcars, or barges. TTB notes that in 27 CFR 19.495, for bulk conveyances of spirits or denatured spirits—which would include containers such as truck tankers, railcars, and barges—TTB allows a label containing the information required by TTB to be securely attached to the route board or another equivalent device. TTB would not object to bulk conveyances of articles or C.D.A. having a label in a manner consistent with § 19.495.

- *ADM comment:* ADM opposed the addition to the regulations of specifications for five new denaturants (high octane denaturant blend, at § 21.112c; naphtha, at § 21.118b; natural gasoline, at § 21.118c; raffinate, at § 21.124a; and straight run gasoline, at § 21.130a) for use in fuel ethanol. ADM asserted that, because of the specific nature of some of the analytical requirements listed with those denaturants, it is not clear that they are commercially available. ADM stated that denaturants listed in the regulations should be available to all industry members. In addition, ADM requested that if TTB finds it necessary to list denaturant specifications, TTB publish them someplace other than in the regulations, asserting that it is easier to change another type of publication than it is the regulations.

TTB response: Industry members may, under 27 CFR 21.91, request that TTB authorize substitute denaturants. To approve a material as a denaturant for a denatured alcohol formula, TTB must determine that (1) the proposed material, when added to spirits (ethanol), makes the ethanol "unfit for beverage or internal human medicinal use;" (2) the use of the proposed material as a substitute denaturant will be adequate to protect the Federal excise tax revenue; and (3) the proposed material is suitable for the intended use. If the material meets these criteria, TTB will authorize the use of the material as a denaturant in making specified C.D.A. or S.D.S. formulations so that the requestor and any other interested industry members may use the material as a denaturant. In order to provide more flexibility to industry, TTB believes that it is appropriate to authorize use of denaturants that meet the criteria. We do not specify as a criterion that the denaturant must be widely available in the commercial market.

However, if an industry member believes that TTB should deauthorize a particular denaturant, we will consider, based on the criteria stated above, a petition submitted by any interested person stating the reasons it believes authorization is not appropriate.

Furthermore, the specification of a denaturant in the regulations does not foreclose any interested person from applying for an alternate method or procedure or any denaturer from requesting authorization to use other denaturants.

Regarding ADM's comment about publishing the requirements someplace other than in the TTB regulations, we recognize that rulemaking can sometimes be a lengthy process. However, TTB's current practice provides the public with a chance for notice and comment on the proposed requirements. After such notice and comment is given, the appropriate vehicle for codification is publication in the Code of Federal Regulations.

- *ADM comment:* ADM requested that TTB (1) recognize consensus specifications and test methods, such as those maintained by ASTM International ("ASTM"), whenever possible, for the denaturants listed in part 21, and (2) encourage and participate in a stakeholder effort to develop such standards if a consensus standard does not exist for a commercially available denaturant. During the comment period, two commenters, ADM and Videojet, noted that a particular consensus standard appearing in the regulations is obsolete. Thus, they recommended that, if TTB cites a consensus standard, the specific version of the consensus standard not be included in the citation, because standards are issued, updated, and withdrawn on a continual basis. ADM provided as an example the denaturant specifications for unleaded gasoline, as set out in 27 CFR 21.110, which cite ASTM Standard D439–79, but which has been withdrawn by ASTM. ADM asserted that TTB should update this reference.

TTB response: TTB uses consensus standards when appropriate and practicable for the Bureau's purpose. When incorporating in regulations a consensus standard by reference, a Federal agency must specifically identify the incorporated materials and is prohibited from incorporating material dynamically. As specified in 1 CFR 51.1(f), "[i]ncorporation by reference of a publication is limited to the edition of the publication that is approved."

TTB agrees that § 21.110 should be amended. Moreover, TTB is undertaking a comprehensive review of all the standards incorporated by reference in part 21 to ensure that TTB regulations cite to the current version of the referenced materials. TTB has determined that it is appropriate to make revisions to 27 CFR 21.6, Incorporations by reference, and other sections in part 21 that include incorporations by reference, not only to update the consensus standard references but also to ensure compliance with the Office of the **Federal Register's** rules in 1 CFR part 5, which were recently revised. See 79 FR 66267, November 7, 2014. Accordingly, TTB will engage in a separate rulemaking to update § 21.6 and the standards incorporated by reference into part 21, including the ASTM standard for unleaded gasoline set forth in 27 CFR 21.110.

- *ADM comment:* Finally, ADM stated its support for TTB's consideration of harmonization of the regulations governing C.D.A. Formula No. 20 and the regulations governing fuel ethanol.

TTB response: TTB will continue to consider such harmonization for a future rulemaking with some other proposed changes to the regulations governing alcohol fuel plants, which are found in 27 CFR part 19, subpart X.

Comment 2

Loren Lowy, an individual who works in industry, expressed support for TTB's designation of S.D.A. Formula No. 3–A as an S.D.A. formulation that is appropriate for the new general-use formula in new § 20.120, because it will ease the regulatory burden on industry by removing the requirement for article formula approval on TTB Form 5150.19 for articles made with formulations of S.D.A. 3–A. He also expressed support for TTB's revision to § 20.63 to expand the adoption of formulas by parent or subsidiary corporations.

Lowy also noted a conflict between the proposed new general-use formula in new § 20.120 and the treatment of reagent alcohol in the proposed revision to § 20.117. Specifically, Lowy explained that there is a contradiction because, under the proposed § 20.120, an article formula is not required for any article made with formulations of S.D.A. 3–A. However, under the proposed § 20.117, reagent alcohol—which is made with 95 parts (by volume) of S.D.A. 3–A, and 5 parts (by volume) of isopropyl alcohol—is to be treated as S.D.A. unless distributed and used in accordance with that section.

Lowy also posed the following questions regarding the treatment as S.D.A. of reagent alcohol that is not distributed and used in accordance with the proposed revised § 20.117:

- Whether reagent alcohol in manufacturing would be included in the annual S.D.A. usage report;
- If so, whether it would be a separate entry from the S.D.A.;
- Whether the report form would change to reflect any necessary separate entries; and
- Whether the total volume of reagent alcohol should be reported or just the S.D.A. 3–A portion of the reagent alcohol.

TTB response: The new multi-purpose general-use formula specified in § 20.120 requires that any article made pursuant to that general-use formula contain sufficient additional ingredients to definitely change the composition and character of the S.D.A. used to make the article in question, and to ensure that the finished article is unfit for beverage or other internal human use and cannot be reclaimed or diverted to beverage use. Reagent alcohol does not contain such sufficient additional ingredients, and so the multi-purpose general-use formula is not applicable. Therefore, TTB is adding paragraph (d) to § 20.120 to provide that the multi-purpose general-use formula may not be used for the production of any articles that conform to another general-use formula in part 20, subpart F. This clarification will prevent any other article that is subject to restrictions in another general-use formula from being manufactured or distributed under the multi-purpose general-use formula without being subject to the restrictions of the other general-use formula.

In response to the commenter's additional questions, TTB notes that reagent alcohol used in manufacturing should be included in the annual S.D.A. usage report. Because reagent alcohol used in manufacturing is to be treated as S.D.A., it would not be a separate entry from S.D.A. Thus, the report will not be changed. Again, because reagent alcohol used in manufacturing is to be treated as S.D.A., the total volume of reagent alcohol should be reported in the annual S.D.A. usage report.

Comment 3a

Videojet disagreed with the new definition of "Fit for beverage use, or fit for beverage purposes" in § 20.11, in that it states that the determination of fitness or unfitness for beverage use would be "based solely on the composition of the product and without regard to extraneous factors such as price, labeling, or advertising." Accordingly, Videojet requested that TTB remove that portion of the definition. Videojet asserted that labeling is definitive because it communicates the intended use of each formulation, that consumer use is prohibited, and, in some cases, it indicates whether a product is poisonous or hazardous to health.

TTB response: With limited exceptions, spirits that are fit for beverage use are subject to Federal excise tax. Reliance on product labeling, rather than product composition, in determining unfitness for beverage use could create a significant jeopardy to the revenue. It would be possible to evade payment of excise taxes due on distilled spirits by labeling the spirits as not intended for beverage use, and then diverting them to beverage use. Accordingly, to protect the revenue, TTB will finalize the definition of "Fit for beverage use, or fit for beverage purposes" as proposed in Notice No. 136, which states that the determination of fitness or unfitness will be "based solely on the composition of the product and without regard to extraneous factors such as price, labeling, or advertising."

Comment 3b

Videojet's next comment related to TTB's clarification of § 20.95, concerning developmental samples of articles. Videojet first noted an inconsistency in the proposed text, where it limits the number of samples to one per customer, but requires that a record of the number of samples sent to each customer be kept. Videojet explained that a product test may require more than one container of an article (like a printer cartridge filled with ink), which would exceed the limitation in § 20.95 that only one sample of each formulation may be sent to each customer. Videojet also explained that customers often prefer a two-stage approval process for testing a product, which would exceed the limitation in § 20.95 that samples be sent on a one-time basis.

TTB response: TTB will retain the limitation of one sample per customer and authorize that samples may only be sent on a one-time basis, to ensure protection of the revenue. Allowing manufacturers to send an unlimited number of samples to customers multiple times would effectively allow manufacturers to distribute articles for which there is no formula approval. Since many articles will be able to be produced under a general-use formula and would not require formula approval on TTB Form 5150.19, this limitation will not affect many articles. In addition, where articles cannot be produced in accordance with a general-use formula, manufacturers may send unlimited numbers of samples if they first obtain formula approval on TTB Form 5150.19. However, TTB is removing from § 20.95 the requirement that a record of the number of samples sent to each customer be kept, since that number will not exceed one.

Comment 3c

Videojet had several detailed comments about TTB's proposed revisions to § 20.115 and proposed new §§ 20.124 and 20.120, as follows:

- *Videojet comment:* Videojet noted an apparent typographical error in the proposed revision to § 20.115, which in Notice No. 136 was proposed to say that the "ink general-use formula authorizes the production of any finished article made with alcohol denatured in accordance with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, or 32, or which . . . [c]ontains pigments, dyes, or dyestuffs sufficient to ensure that the article is unfit for beverage use . . . ."

TTB response: The second use of the word "or" in the proposed regulation was a typographical error, which TTB is correcting in this final rule.

- *Videojet comment:* Videojet asked that the TTB expand the list of S.D.A. formulations that are specified in the ink general-use formula in section 20.115, to include S.D.A. Formula Nos. 35–A, 40–B, and 45. Videojet also asked that TTB add the use code for inks (use code 052) to §§ 21.62(b)(1), 21.76(b)(1), and 21.80(b)(1), and add references to S.D.A. Formula Nos. 35–A, 40–B, and 45 to the table in § 21.141.

TTB response: TTB has determined that formulations of S.D.A. Formula Nos. 35–A and 40–B would be appropriate in the ink general-use formula in § 20.115, and would not create a threat to the revenue as part of the general-use formula. Because industry members are using formulations of S.D.A. Formula Nos. 35–A and 40–B to manufacture inks, TTB will add references to those formulas to the list of S.D.A. formulations specified in the ink general-use formula in § 20.115. However, TTB has determined that it will not add S.D.A. Formula No. 45 to the general-use formula because that formula—which specifies the addition of 300 pounds of refined whole or orange shellac to every 100 gallons of alcohol—is not, to TTB's knowledge, typically used in manufacturing inks, and is currently only authorized for use in manufacturing candy glazes. S.D.A. users may continue to seek approval from TTB to manufacture ink using formulations of S.D.A. Formula No. 45 by filing TTB Form 5150.19.

- *Videojet comment:* As proposed in Notice No. 136, inks manufactured in accordance with the general-use formula specified in § 20.115 would be required to contain "pigments, dyes, or dyestuffs sufficient to ensure that the article is unfit for beverage use." Videojet noted that although one or more of those ingredients are present in ink, there are other ingredients that may be present that may serve to further render the ink unfit for beverage use. Accordingly, Videojet asked TTB to require that inks manufactured in accordance with the general-use formula contain "pigments, dyes, or dyestuffs, solvents, or other ingredients sufficient to ensure that the article is unfit for beverage use."

TTB response: TTB agrees that other ingredients used in manufacturing ink may render the ink unfit for beverage use. However, Videojet's proposed modification to § 20.115 would allow for an ink to contain no pigments, dyes, or dyestuffs. Accordingly, TTB will modify § 20.115 to require that inks manufactured in accordance with the general-use formula contain "pigments, dyes, or dyestuffs, which, alone or in combination with solvents or other ingredients, are sufficient to ensure that the article is unfit for beverage use."

- *Videojet comment:* Videojet supported the addition of the duplicating fluid and ink solvent general-use formula in § 20.124, but asked TTB to harmonize the ink general-use formula with the duplicating fluid and ink solvent general-use formula because in some cases ink and ink solvent must be combined in a printer. Specifically, Videojet asked TTB to add S.D.A. 13–A, 23–A, 30, 32, 35–A, 40–B, and 45 to the list of S.D.A. formulations authorized by the duplicating fluid and ink solvent general-use formula.

TTB response: To reduce the compliance burden on S.D.A. users that manufacture duplicating fluids and ink solvents, TTB will add S.D.A. 13–A, 23–A, 30, 32, 35–A, and 40–B to the list of S.D.A. formulations authorized by the duplicating fluid and ink solvent general-use formula. TTB will also add use code 485 (miscellaneous solutions) to §§ 21.41, 21.59, 21.62, and 21.76 to authorize formulations of S.D.A. Formula Nos. 13–A, 32, 35–A, and 40–B in the manufacture of miscellaneous solutions, and will add S.D.A.13–A, 32, 35–A, and 40–B to the entry for use code 485 in the chart in § 21.141. S.D.A. Formula Nos. 23–A and 30 are already authorized for use in miscellaneous solutions (use code 485). However, TTB has determined not to add S.D.A. Formula No. 45 to the general-use formula because that formula is not, to TTB's knowledge, typically used in manufacturing duplicating fluids or ink solvents, and is currently only authorized for use in manufacturing candy glazes. S.D.A. users may continue to seek approval from TTB to manufacture ink using formulations of S.D.A. Formula No. 45 by filing TTB Form 5150.19.

- *Videojet comment:* Videojet stated that, while the proposed duplicating fluid and ink solvent general-use formula stipulates specific further denaturants (*n*-propyl acetate, isopropyl alcohol, or methyl alcohol), "it is generally not feasible to add [those] specific solvents to the ink solvent formulation due to the intrinsic connection between the ink formula and the ink solvent formula." Accordingly, Videojet asked that TTB instead allow for the use of "pigments, dyes, dyestuffs, solvents or other ingredients sufficient to ensure that the article is unfit for beverage use" as an alternative to n-propyl acetate, isopropyl alcohol, or methyl alcohol.

TTB response: TTB often receives requests for formula approval that specify the use of *n*-propyl acetate, isopropyl alcohol, or methyl alcohol in duplicating fluids or ink solvents. Therefore, it is feasible for at least some industry members to use those ingredients in duplicating fluids and ink solvents. The duplicating fluid and ink solvent general-use formula also allows the resulting article to contain additional ingredients not specified in the general-use formula, so a manufacturer is not precluded from adding dyes to the solvent. TTB believes that it is appropriate to maintain the requirement that duplicating fluids and ink solvents produced in accordance with the general-use formula contain *n*-propyl acetate alone or in combination with isopropyl alcohol or methyl alcohol. S.D.A. users may still submit requests for formula approval on TTB Form 5150.19 for articles that do not conform to this general-use formula.

- *Videojet comment:* Videojet also asked TTB to add S.D.A. Formula No. 3–C to the general-use formula in § 20.120 because doing so would reduce the regulatory burden on industry and on TTB without threatening the revenue.

TTB response: TTB believes that it would be inappropriate to include S.D.A. Formula No. 3–C in the general purpose general-use formula in § 20.120. The current and proposed general-use formulas that specify S.D.A. 3–C (special industrial solvents, duplicating fluids and ink solvents, ink, and toilet preparations) also specify certain other ingredients to ensure that the resulting article is unfit for beverage use. To ensure adequate protection of the revenue, the Bureau believes it is appropriate to continue reviewing formulas for other articles made with S.D.A. 3–C.

- *Videojet comment:* Videojet next asked TTB to authorize the use of formulations of S.D.A. Formula Nos. 13–A, 19, 32, and 35–A in cleaning solutions.

TTB response: TTB has received no data to support authorizing the use of formulations of S.D.A. Formula Nos. 13–A, 19, 32, and 35–A in cleaning solutions. Since 1991, when TTB began its practice of electronic recordkeeping, no requests have been received for the use of formulations of S.D.A. Formula Nos. 13–A, 19, 32, and 35–A in cleaning solutions, which suggests that industry members are not interested in those formulations for that purpose. However, TTB will consider authorizing those S.D.A. formulations for use in cleaning solutions in the future if TTB receives sufficient information to support doing so.

- *Videojet comment:* Videojet also asked that, in § 20.120, TTB remove the requirement that only additional ingredients other than the denaturants prescribed for the applicable S.D.A. formulas be added to the article to definitely change the composition and character of the S.D.A. used to make the article and to ensure that the finished article is unfit for beverage use.

TTB response: An article that is made by taking an S.D.A. formulation and adding more of the denaturant that was used to make the S.D.A. has the same character and very similar composition of the S.D.A. Additional ingredients used to manufacture an article in accordance with the multi-purpose general-use formula in § 20.120 must substantially change the nature of the S.D.A. Accordingly, TTB will maintain the requirement that an article produced in accordance with the multi-purpose general-use formula contain additional ingredients beyond the denaturant used in the S.D.A.

- *Videojet comment:* Finally, Videojet noted that if an article is manufactured under the general-use formula specified in § 20.120 by combining two S.D.A. formulations and an additional ingredient, the article must conform to a use code that is authorized for both S.D.A. formulations. In contrast, an article that is manufactured by combining one S.D.A. formulation with an intermediate ingredient that is itself comprised of the second S.D.A. formulation and the additional ingredient, the article would only have to conform to a use code that is authorized for the S.D.A. formulation that is not used in the intermediate ingredient.

TTB response: By law (26 U.S.C. 5242), denaturing materials must be suitable for the intended use. To help ensure this, TTB will continue to require that an article made under the multi-purpose general-use formula with multiple S.D.A. formulations conforms to a use code that is authorized for all of the S.D.A. formulations used. Manufacturers using multiple S.D.A. formulations to produce an article may seek formula approval from TTB on TTB Form 5150.19 if the intended use of the article is not covered by a use code that is authorized for all of the S.D.A. formulations being used. In the case of intermediate articles being used in the manufacture of another article, the intermediate article must be suitable for that intermediate use.

Comment 3d

Videojet also raised some concerns related to other national and international standards, as follows:

- *Videojet comment:* Videojet noted that other Federal agencies, like the Occupational Safety and Health Administration (OSHA), also maintain rules concerning the communication of hazards.

TTB response: TTB is aware that other Federal agencies maintain rules concerning the labeling and handling of certain chemicals, or products that contain certain chemicals. Section 20.136 currently notes that such rules are implemented by the Consumer Product Safety Commission (CPSC), Federal Trade Commission (FTC), and Food and Drug Administration (FDA). The labeling requirements specified in TTB's regulations for articles that would contain methanol if produced in accordance with certain general-use formulas (specifically, the special industrial solvents general-use formula, proprietary solvents general-use formula, reagent alcohol general use formula in §§ 20.112, 20.113, and 20.117, and the proposed duplicating fluid and ink solvent general-use formula in § 20.124) were derived from CPSC requirements found in 16 CFR 1500.14(b)(4). TTB believes that industry will be aided in complying with all applicable labeling regulations if TTB refers in its regulations to the applicable labeling regulations of other Federal agencies. TTB believes that the best approach is to refer to those other applicable Federal labeling requirements in part 20. Accordingly, TTB is revising § 20.136 to reference the labeling regulations of other Federal agencies, and is removing the labeling requirements from §§ 20.112, 20.113, 20.117, and 20.124.

- *Videojet comment:* Videojet also noted that the United Nations (UN) Globally Harmonized System of Classification and Labelling of Chemicals (GHS) uses the acronym "SDS" to refer to "safety data sheet." Videojet asked TTB to consider whether

TTB's "S.D.S." acronym for "specially denatured spirits" would be confusing given the prevalence of the acronym "SDS" in the UN GHS.

TTB response: Many widely used acronyms abbreviate a term despite being identical to an acronym that abbreviates a different term. Readers can usually determine which term an acronym is abbreviating based on the context in which it is being used. Accordingly, TTB will continue using the abbreviation "S.D.S." for "specially denatured spirits" in its regulations.

Comment 4

RFA made several points in its comment submission. The comments, and TTB's responses, are as follows:

- *RFA comment:* RFA expressed support for TTB's effort toward a future rulemaking that would harmonize the denaturant specifications for C.D.A. Formula No. 20 and fuel alcohol.

TTB response: As stated above in response to ADM's similar comment, TTB will continue to consider such harmonization for a future rulemaking.

- *RFA comment:* RFA, noting the outdated denaturant specifications for unleaded gasoline, recommended that TTB base denaturant specifications on consensus standards, like those developed by ASTM, instead of providing specifications. As mentioned above, RFA also recommended that TTB maintain its list of denaturants and the specifications for those denaturants in a place other than the regulations and update the list as needed, because updating regulations is a lengthy process.

TTB response: As explained above in response to ADM's similar comments, under Federal regulations, a Federal agency must identify the specific version of the consensus standard incorporated by reference into its particular regulations. TTB will engage in a separate rulemaking to update references to outdated consensus standards appearing in part 21.

RFA comment: RFA stated that it is important that denaturant specifications in the TTB regulations represent a commercially available material, and that the authorized denaturants "conform to very stringent requirements of both state and Federal regulations for motor fuels and fuel additives."

TTB response: Regarding commercial availability, as noted above in response to one of ADM's comments, TTB may authorize denaturants that conform to certain specifications upon receipt of a petition. If an industry member believes that TTB should change or deauthorize a particular denaturant or its specifications, the industry member should submit to TTB a petition for the change that provides information about why TTB should make the change. Regarding conformity with State and Federal regulations for motor fuels and fuel additives, TTB tries to be consistent with other Federal regulations. As this document explains, TTB's statutory authority in regulating denatured alcohol pertains to protecting the Federal excise tax revenue. Accordingly, TTB's determinations will primarily be based on revenue protection considerations. Ultimately, industry members remain responsible for ensuring compliance with State and other Federal regulations.

- *RFA comment:* RFA recommended that TTB remain open to approving denaturants of non-hydrocarbon origin.

TTB response: TTB will consider authorizing denaturants of non-hydrocarbon origin. Under the authority of 27 CFR 21.91, the appropriate TTB officer may, pursuant to written application filed by the denaturer, authorize the use of substitute denaturants if such substitution will not jeopardize the revenue. An industry member who would like TTB to authorize a substitute denaturant should submit a request to TTB for authorization of the denaturant pursuant to § 21.91.

- *RFA comment:* RFA supported the clarification of jurisdiction over imported denatured spirits and fuel alcohol. RFA noted that TTB should provide clarity for the regulatory requirements in support of unfettered transportation and use of fuel alcohol.

TTB response: TTB is adding new § 27.222 to the regulations to help clarify the regulations regarding the importation of denatured spirits. TTB welcomes petitions for additional regulatory changes that industry members feel are needed.

TTB Finding

After careful review of the comments discussed above, TTB is finalizing the proposed amendments, with the adjustments explained above. In addition, TTB is altering some of the section numbers proposed in Notice No. 136 to conform to Office of Federal Register policies. Specifically, proposed §§ 21.21a, 21.94a, 21.105a, 21.105b, 21.106a, 21.108a, 21.112a, 21.112b, 21.112c, 21.115a, 21.115b, 21.118a, 21.118b, 21.118c, 21.121a, 21.124a, and 21.130a are being finalized as 27 CFR 21.26, 21.94–T, 21.105–T1, 21.105–T2, 21.106–T, 21.108–T, 21.112–T1, 21.112–T2, 21.112–T3, 21.115–T1, 21.115–T2, 21.118–T1, 21.118–T2, 21.118–T3, 21.122, 21.124–T, and 21.130–T. Finally, TTB is making a number of technical corrections to existing regulations, beyond those that were proposed in Notice No. 136. These technical corrections merely update or clarify the application of those provisions and do not change the Bureau's interpretation of any regulation or the requirements of any recordkeeping provision.

- One technical correction concerns the use of S.D.S. in foreign-trade zones. Section 484F of the Customs and Trade Act of 1990, Public Law 101–382, 104 Stat. 706, 710, enacted on August 20, 1990, amended 19 U.S.C. 81c(c) by eliminating the requirement that specially denatured spirits used in a foreign-trade zone come from domestic sources. Accordingly, TTB is amending 27 CFR 19.427 to conform with this statutory change.

- TTB is updating additional OMB control numbers in 27 CFR 20.22, 20.56, 20.57, 20.60, 20.61, 20.62, 20.68, 20.142, 20.149, 20.163, 20.170, 20.171, 20.172, 20.180, 20.192, 20.202, 20.203, 20.212, 20.216, 20.231, 20.232, 20.234, 20.235, 20.251, 20.252, 20.261, 20.262, 20.263, and 20.265 to reflect the change from ATF to TTB.

- TTB is amending 27 CFR 20.11 and 20.20 to clarify that references to "TTB Order 1135.20" are to the most recent version of that order, which is not necessarily the original version.

- Typographical errors are corrected in 27 CFR 20.59, 20.93, 20.100, 20.118, 20.131, 20.163, 21.11, 21.49, 21.64, 21.65, and 21.125.

- In 27 CFR 20.92, the reference to the TTB Bulletin is replaced with a reference to TTB's Web site.

- In 27 CFR 20.112 and 20.113, TTB is replacing the erroneous cross-reference to 27 CFR 21.106 with the correct cross-reference 27 CFR 21.107 for the location of a definition of 85 percent ester content.

- In 27 CFR 20.118, the reference to "Bitrex (THS 839)," which is a registered trade name, has been replaced by the generic term "denatonium benzoate."

- In 27 CFR 20.191, the last sentence is removed, since TTB Publication 5150.5 is no longer available.

- TTB is amending 27 CFR 21.7 and 21.11 to clarify that references to "TTB Order 1135.21" are to the most recent version of that order, which is not necessarily the original version.

- Finally, TTB is updating the abbreviation for "milliliters" in 20.11 and throughout part 21 from "ml" to "mL" to reflect current usage.

Regulatory Analyses and Notices

Executive Order 12866

Certain TTB regulations issued under the IRC, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6) TTB certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule updates the regulations to align them with current industry practice, clarifies other regulatory provisions, and reduces the regulatory burden on the alcohol industry as well as TTB, resulting in an estimated 80 percent reduction in the number of article formulas submitted to TTB. Thus, the regulatory changes do not create any additional requirements or burdens on small businesses, and are expected to decrease the regulatory burden on industry members, including small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, TTB submitted the notice of proposed rulemaking (Notice No. 136, 78 FR 38628, June 27, 2013) to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on the impact of these regulations. The SBA had no comment on the proposed rule.

Finally, as previously mentioned, TTB is making a number of technical corrections to existing regulations in this rulemaking that were not proposed in Notice No. 136. TTB has determined, in accordance with 5 U.S.C. 553(b)(3)(B) that it is unnecessary and contrary to public interest to follow prior public notice and comment procedures with respect to the technical corrections, and 5 U.S.C 553(b) does not apply.

Paperwork Reduction Act

The collections of information in the regulations contained in this final rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) and assigned control numbers 1513–0011, 1513–0028, 1513–0037, 1513–0061, and 1513–0062. Specific regulatory sections in this final rule that contain collections of information are 27 CFR 19.607, 20.63, 20.95, 20.111, 20.117, 20.133, 20.134, 20.183, 20.193, 20.222, 20.262, 20.263, and 20.264. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Several amendments made in this document reduce information collection burdens. Specifically, certain amendments alter circumstances under which article manufacturers must obtain formula approval using TTB Form 5150.19, Formula and/or Process for Article Made with Specially Denatured Spirits. Information collections associated with Form 5150.19 are currently approved under OMB control number 1513–0011. These amendments reduce required submissions of Form 5150.19, and thus reduce the total burden hours currently estimated for control number 1513–0011 by an estimated 955 burden hours, and an 80 percent reduction in the number of these forms submitted to TTB.

Four categories of amendments will reduce required submissions of Form 5150.19:

- Addition to part 20 of new sections 27 CFR 20.120 through 20.124, setting forth five new general-use formulas covering articles made with 19 different S.D.A. formulations;
- Amended regulations in part 21 that reclassify S.D.A. Formula Nos. 12–A and 35 as C.D.A. formulas;
- Amended 27 CFR 20.113(a) and 20.115, which permit the use of additional S.D.A. formulations in the proprietary solvents general-use formula and ink general-use formula; and
- Amended 27 CFR 20.63, which allows a permittee to adopt, for use at a plant where such use is not specifically approved, one of the permittee's own article formulas previously approved for use at another of the permittee's plants, or to adopt a formula previously approved for a parent or wholly-owned subsidiary.

TTB estimates that, as a result of the amendments, the new annual burden hours will be as follows:

- *Estimated total annual reporting and/or record keeping burden:* 239 hours.
- *Estimated average annual burden hours per respondent:* 0.84 hours.
- *Estimated number of respondents:* 285.
- *Estimated annual frequency of responses:* 1 (one).

One amendment involves an alteration to the information collection currently approved under, OMB control number 1513–0061. The amendment to 27 CFR 20.63 allows a permittee to adopt, for use at a plant where such use is not specifically approved, one of the permittee's own article formulas previously approved for use at another of the permittee's plants, or to adopt a formula previously approved for a parent or wholly-owned subsidiary. Previous to this rulemaking, permittees could adopt formulas under more limited circumstances by submitting a certificate of adoption to TTB, which is an information collection currently approved under control number 1513–0061. Although TTB estimates that the amendment will increase the number of certificates of adoption submitted to TTB under § 20.63, it also proportionally decreases the number of submissions of Form 5150.19 that would have been required absent the amendment. Since the estimated average annual burden per respondent relating to certificates of adoption approved under control number 1513–0061 is smaller than the average annual burden for Form 5150.19 under control number 1513–0011, the amendment reduces the overall burden on permittees. TTB estimates that, as a result of this amendment, the new annual burden under control number 1513–0061 will be as follows:

- *Estimated total annual reporting and/or record keeping burden:* 1,897 hours.
- *Estimated average annual burden hours per respondent:* 0.5 hours.
- *Estimated number of respondents:* 3,794.
- *Estimated annual frequency of responses:* 1 (one).

Other amendments to regulatory sections that involve collections of information do not impact the burden hours associated with those collections. Proposed amendments to 27 CFR 19.607, 20.95, 20.111, 20.117, 20.133, 20.134, 20.193, 20.222, 20.262, 20.263, and 20.264 neither increase nor decrease information collections because the amendments clarify preexisting regulatory requirements and do not otherwise impose new requirements increasing information collection burdens. New 27 CFR 20.183 allows S.D.S. dealers to export S.D.S. and requires such dealers to complete TTB Form 5100.11. TTB estimated that the amendment would not increase submissions of Form 5100.11 because, although the amendment allows an additional category of persons to export, the amendment is not expected to increase demand for exported S.D.S. Thus, the exporters may be different, but the number of exportations is not expected to change. Since TTB is only including an additional category of persons entitled to export S.D.S., and is not increasing information collection burdens associated with exporting S.D.S., the proposed amendment will not impact currently estimated information collection burdens. Information collections associated with the amendments described in this paragraph are currently approved under OMB control numbers 1513–0028, 1513–0037, and 1513–0062. TTB estimates the annual burden hours under these control numbers are as follows:

OMB Control Number 1513–0028:

- *Estimated total annual reporting and/or record keeping burden:* 419 hours.
- *Estimated average annual burden hours per respondent:* 0.76 hour.
- *Estimated number of respondents:* 550.
- *Estimated annual frequency of responses:* 1 (one).

OMB Control Number 1513–0037:

- *Estimated total annual reporting and/or record keeping burden:* 6,000 hours.
- *Estimated average annual burden hours per respondent:* 20 hours.
- *Estimated number of respondents:* 300.
- *Estimated annual frequency of responses:* 20.

OMB Control Number 1513–0062:

- *Estimated total annual reporting and/or record keeping burden:* 1 hour.
- *Estimated number of respondents:* 3,430.
- *Estimated annual frequency of responses:* 1 (one).

TTB received no comments about the information collections approved under OMB control numbers 1513–0011, 1513–0028, 1513–0037, 1513–0061, and 1513–0062 in response to Notice No. 136.

Drafting Information

Karen E. Welch of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR

Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfer, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packages and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Part 21

Alcohol and alcoholic beverages, Incorporation by reference.

Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, and Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR parts 19, 20, 21, 27, and 28 as follows:

PART 19—DISTILLED SPIRITS PLANTS

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 19.412 is added under the undesignated center heading "Receipt of Spirits from Customs Custody" to read as follows:

§ 19.412 Importation of denatured spirits.

For provisions relating to the importation of denatured spirits, see § 27.222 of this chapter.

■ 3. In § 19.427, paragraph (a)(2) is revised to read as follows:

§ 19.427 Removal of denatured spirits and articles.

(a) * * *

(2) A proprietor may transfer specially denatured spirits to qualified users located in a foreign trade zone for use in the manufacture of articles under part 20 of this chapter.

* * * * *

■ 4. Section 19.607 is revised to read as follows:

§ 19.607 Article manufacture records.

Each processor qualified to manufacture articles must maintain daily manufacturing and disposition records, arranged by the name and authorized Use Code of the article, in the manner provided in part 20 of this chapter.

■ 5. Section § 19.746 is amended by revising paragraphs (b)(1)(xi) and (b)(1)(xii), adding paragraphs (b)(1)(xiii) through (b)(1)(xvi), and revising paragraph (c) to read as follows:

§ 19.746 Authorized materials.

* * * * *

(b) * * *

(1) * * *

(xi) Naphtha;

(xii) Straight run gasoline;

(xiii) Alkylate;

(xiv) High octane denaturant blend;

(xv) Methyl tertiary butyl ether; or

(xvi) Any combination of the materials listed in paragraphs (b)(1)(i) through (xv) of this section;

* * * * *

(c) *Specifications.* Specifications for the materials listed in paragraph (b) are found in part 21, subpart E, of this chapter.

* * * * *

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

■ 6. The authority citation for part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

■ 7. Section 20.11 is amended by:

■ a. Revising the definition of "Appropriate TTB officer";

■ b. Adding in alphabetical order definitions for "Fit for beverage use, or fit for beverage purposes" and "Internal human use";

■ c. Revising the definition of "Liter or litre";

■ d. Removing the definition of "Specially denatured spirits";

■ e. Adding in alphabetical order a definition for "Specially Denatured Spirits or S.D.S."

■ f. Adding in alphabetical order definitions for "TTB" and "Unfit for beverage use, or unfit for beverage purposes"; and

■ g. Revising the Office of Management and Budget control number referenced at the end of the section.

The revisions and additions read as follows:

§ 20.11 Meaning of terms.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by the current version of TTB Order 1135.20, Delegation of the

Administrator's Authorities in 27 CFR part 20, Distribution and Use of Denatured Alcohol and Rum.

* * * * *

Fit for beverage use, or fit for beverage purposes. Suitable for consumption as an alcoholic beverage by a normal person, or susceptible of being made suitable for such consumption merely by dilution with water to an alcoholic strength of 15 percent by volume. The determination is based solely on the composition of the product and without regard to extraneous factors such as price, labeling, or advertising.

* * * * *

Internal human use. Use inside the human body, but not including use only in the mouth where the substance being used is not intended to be swallowed.

* * * * *

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters of alcohol, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. The symbol for milliliter or milliliters is "mL".

* * * * *

Specially Denatured Spirits or S.D.S. Specially denatured alcohol and/or specially denatured rum.

* * * * *

TTB. The Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of the Treasury.

* * * * *

Unfit for beverage use, or unfit for beverage purposes. Not conforming to the definition of "Fit for beverage use, or fit for beverage purposes" in this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0061)

§ 20.20 [Amended]

■ 8. In § 20.20, the second sentence is amended by adding the words "the current version of" immediately before the words "TTB Order 1135.20".

§§ 20.22, 20.56, 20.57, 20.60, 20.61, 20.62, 20.68, 20.142, 20.149, 20.170, 20.171, 20.172, 20.180, 20.192, 20.202, 20.203, 20.212, 20.216, 20.231, 20.232, 20.234, 20.235, 20.251, 20.252, 20.261, 20.262, 20.263, and 20.265 [Amended]

■ 9. For each section indicated in the left-hand column of the table below, the parenthetical phrase at the end of each section is amended by removing the Office of Management and Budget control number indicated in the middle column, and adding, in its place, the number indicated in the right-hand column:

Section	Remove	Add
20.22	1512–0336	1513–0061
20.56	1512–0336	1513–0061
20.57	1512–0336	1513–0061
20.60	1512–0336	1513–0061
20.61	1512–0336	1513–0061
20.62	1512–0336	1513–0061
20.68	1512–0336	1513–0061
20.142	1512–0337	1513–0062
20.149	1512–0337	1513–0062
20.170	1512–0337	1513–0062
20.171	1512–0337	1513–0062
20.172	1512–0337	1513–0062
20.180	1512–0337	1513–0062
20.192	1512–0337	1513–0062
20.202	1512–0336	1513–0061
"	1512–0337	1513–0062
20.203	1512–0337	1513–0062
20.212	1512–0337	1513–0062
20.216	1512–0337	1513–0062
20.231	1512–0337	1513–0062
20.232	1512–0337	1513–0062
20.234	1512–0336	1513–0061
20.235	1512–0337	1513–0062
20.251	1512–0337	1513–0062
20.252	1512–0336	1513–0061
20.261	1512–0337	1513–0062
20.262	1512–0337	1513–0062
20.263	1512–0337	1513–0062
20.265	1512–0336	1513–0061

■ 10. In § 20.41, paragraph (d)(1) is revised to read as follows:

§ 20.41 Application for industrial alcohol user permit.

* * * * *

(d) *Exceptions.* (1) The proprietor of a distilled spirits plant qualified under part 19 of this chapter is not required to qualify under this part for activities conducted at that plant's bonded premises.

* * * * *

§ 20.59 [Amended]

■ 11. In § 20.59, paragraph (a) is amended by removing the word "teminated" and adding, in its place, the word "terminated".

■ 12. Section 20.63 is revised to read as follows:

§ 20.63 Adoption of formulas and statements of process.

(a) Adoption of formulas and statements of process is permitted:

(1) When a successor (proprietorship or fiduciary) adopts a predecessor's formulas and statements of process as provided in §§ 20.57(c) and 20.58; and

(2) When a permittee adopts for use at one plant, the formulas previously approved by TTB for use at another plant, or when a permittee adopts a formula previously approved by TTB for a parent or subsidiary, provided that in the case of a parent-subsidiary relationship the subsidiary is wholly-owned by the parent.

(b) The adoption will be accomplished by the submission of a certificate of adoption. The certificate of adoption shall be submitted to the appropriate TTB officer and shall contain:

(1) A list of all approved formulas or statements of process in which S.D.S. is used or recovered;

(2) The formulas of S.D.S. used or recovered;

(3) The dates of approval of the relevant Forms 1479–A or TTB Forms 5150.19:

(4) The applicable code number(s) for the article or process;

(5) The name of the permittee adopting the formulas, followed by the phrase, for each formula, "Formula of ___ (Name and permit number of permittee who received formula approval) is hereby adopted;" and

(6) In the case of a permittee adopting the formulas of another entity, evidence of its relationship to that entity.

(Approved by the Office of Management and Budget under control number 1513–0061)

§ 20.91 [Amended]

■ 13. In § 20.91, paragraph (a) is amended by removing the words "in the TTB Bulletin" and adding, in their place, the words "on the TTB Web site at *https://www.ttb.gov*".

■ 14. In § 20.93, paragraph (a) is amended by removing the word "appoved" and adding, in its place, the word "approved".

■ 15. Section 20.95 is revised to read as follows:

§ 20.95 Developmental samples of articles.

(a) *Samples for submission to TTB.* Prior to receiving formula approval on TTB Form 5150.19, a user may use S.D.S. in the manufacture of samples of articles for submission in accordance with § 20.92. However, the user may only use the limited quantity of S.D.S. that is necessary to produce the samples.

(b) *Samples for shipment to prospective customers.* Prior to submitting a formula and statement of process on TTB Form 5150.19, a user may use S.D.S. to prepare developmental samples of articles for shipment to prospective customers. Only one sample of each formulation of the article under development may be sent to each customer. Each sample shall be no larger than necessary for the customer to determine whether the product meets its requirements. The user shall maintain records showing:

(1) The types of product samples prepared;

(2) The size of the samples sent, on a one-time basis, to each prospective customer; and

(3) The names and addresses of the prospective customers.

(c) *Formula requirement.* Before the user begins to make a quantity greater than specified in this section, formula approval on TTB Form 5150.19 is required.

(Approved by the Office of Management and Budget under control number 1513–0062)

§ 20.100 [Amended]

■ 16. In § 20.100, paragraph (a) is amended by removing the word "addiition" and adding, in its place, the word "addition".

■ 17. Section 20.102 is revised to read as follows:

§ 20.102 Bay rum, alcoholado, or alcoholado-type toilet waters.

Unless manufactured exclusively for export under a formula approved by TTB and endorsed "For Export Only," bay rum, alcoholado, or alcoholado-type toilet waters made with S.D.S. shall contain in each gallon of finished product:

(a) 71 milligrams of denatonium benzoate (also known as benzyldiethyl (2:6-xylylcarbamoyl methyl) ammonium benzoate) in addition to any of this material used as a denaturant in the specially denatured alcohol;

(b) 2 grams of tartar emetic; or

(c) 0.5 avoirdupois ounce of sucrose octaacetate.

§ 20.103 [Removed and Reserved]

■ 18. Section 20.103 is removed and reserved.

■ 19. Section 20.111 is amended by revising paragraph (a), adding a new paragraph (c), and revising the Office of Management and Budget control number referenced at the end of the section, to read as follows:

§ 20.111 General.

(a) Formula approval obtained on TTB Form 5150.19 is not required for an article made in accordance with any approved general-use formula that is specified in §§ 20.112 through 20.124, that is approved by the appropriate TTB officer as an alternate method, or that is published as a TTB Ruling on the TTB Web site at *https://www.ttb.gov.* However, a statement of process on TTB Form 5150.19 is still required in any of the circumstances described in § 20.94.

* * * * *

(c) The manufacturer shall ensure that each finished article made pursuant to a general-use formula is unfit for beverage use and is incapable of being reclaimed or diverted to beverage use or internal human use.

(Approved by the Office of Management and Budget under control number 1513–0061)

§ 20.112 [Amended]

■ 20–21. Section 20.112 is amended by:

■ a. In the last sentence of paragraph (a) introductory text, removing the word "alcohol" and adding, in its place, the letters "S.D.A.";

■ b. In paragraph (a)(1) by adding the words "propylene glycol monomethyl ether," after the words "nitropropane (mixed isomers),"; and

■ c. In paragraph (a)(2) is amended by removing the cross-reference to "§ 21.106" and adding, in its place, the cross-reference "§ 21.107".; and

■ d. Removing paragraph (c).

■ 22. Section 20.113 is revised to read as follows:

§ 20.113 Proprietary solvents general-use formula.

A proprietary solvent made pursuant to this formula shall be made with alcohol denatured in accordance with S.D.A. Formula No. 1, 3–A, or 3–C and shall contain, for every 100 parts (by volume) of S.D.A.:

(a) No less than 1 part (by volume) of one or any combination of the following: Gasoline, unleaded gasoline, heptane, or rubber hydrocarbon solvent, and

(b) No less than 3 parts (by volume) of one or any combination of the following: Ethyl acetate (equivalent to 85 percent ester content, as defined in § 21.107 of this chapter), methyl isobutyl ketone, methyl n-butyl ketone, tert-butyl alcohol, sec-butyl alcohol, nitropropane (mixed isomers), ethylene glycol monoethyl ether, or toluene.

■ 23. In § 20.114, the introductory text and paragraph (a) are revised to read as follows:

§ 20.114 Tobacco flavor general-use formula.

This tobacco flavor general-use formula authorizes the production of any finished article made with alcohol denatured in accordance with S.D.A. Formula No. 4 or S.D.R. Formula No. 4 which—

(a) Contains flavors sufficient to ensure that the article is unfit for beverage or internal human use,

* * * * *

■ 24. In § 20.115, the introductory text and paragraph (a) are revised to read as follows:

§ 20.115 Ink general-use formula.

This ink general-use formula authorizes the production of any finished article made with alcohol denatured in accordance with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, 32, 35–A, or 40–B, which—

(a) Contains pigments, dyes, or dyestuffs, which, alone or in combination with solvents or other ingredients, are sufficient to ensure that the article is unfit for beverage use,

* * * * *

■ 25. Section 20.116 is revised to read as follows:

§ 20.116 Low alcohol general-use formula.

This low alcohol general-use formula authorizes the production of any finished article containing not more than 5 percent alcohol by weight or volume. Articles containing no alcohol, or whose manufacture involves the recovery of S.D.S., shall be covered by a statement of process on TTB Form 5150.19 submitted under § 20.94.

■ 26. Section 20.117 is revised to read as follows:

§ 20.117 Reagent alcohol general-use formula.

(a) *General.* Reagent alcohol must be made in accordance with paragraph (b) of this section and labeled in accordance with paragraph (c) of this section. Reagent alcohol is—

(1) Treated as an article if distributed and used in accordance with paragraph (d) of this section; or

(2) Treated as S.D.A. if distributed and used in accordance with paragraph (e) of this section.

(b) *Formula.* Reagent alcohol shall be made with 95 parts (by volume) of S.D.A. 3–A, and 5 parts (by volume) of isopropyl alcohol. Water may be added at the time of manufacture. Reagent alcohol shall not contain any ingredient other than those specified in this paragraph.

(c) *Labeling.* Each container of reagent alcohol, regardless of size, shall have affixed to it a label containing the following words that are as conspicuous as any other words on the container labels: "Reagent Alcohol: Specially Denatured Alcohol Formula 3–A, 95 parts by vol.; and Isopropyl Alcohol, 5 parts by vol." If water is added at the time of manufacture, the label shall specify the composition of the product as diluted.

(d) *Distribution and use of reagent alcohol as an article.* Reagent alcohol is treated as an article if distributed exclusively for the purpose of scientific use. Only the following distributions of reagent alcohol are permitted under this paragraph:

(1) *For scientific use.* (i) *In smaller containers.* The manufacturer or repackager of the reagent alcohol, or an

S.D.S. dealer, may distribute reagent alcohol in containers not exceeding four liters to laboratories or other persons who require reagent alcohol for scientific use.

(ii) *In bulk containers.* The manufacturer of the reagent alcohol, or an S.D.S. dealer, may distribute reagent alcohol in containers larger than four liters to a laboratory or other person requiring reagent alcohol for scientific use if that laboratory or person is qualified to receive bulk shipments of reagent alcohol on October 31, 2016 or has received, from the appropriate TTB officer, approval of a letterhead application containing the following information:

(A) The applicant's name, address, and permit number, if any;

(B) An explanation of the applicant's need for bulk quantities of reagent alcohol;

(C) A description of the security measures that will be taken to segregate reagent alcohol from denatured spirits or other alcohol that may be on the same premises; and

(D) A statement that the applicant will allow any appropriate TTB officer to inspect the applicant's premises.

(2) *For repackaging.* The manufacturer of the reagent alcohol, or an S.D.S. dealer, may distribute reagent alcohol in containers larger than 4 liters to the persons specified in this paragraph. Those persons must repackage the reagent alcohol in containers not exceeding 4 liters, label the smaller packages in accordance with paragraph (c) of this section, and redistribute them in accordance with paragraph (d)(1)(i) of this section. The persons to whom reagent alcohol may be distributed in bulk for repackaging under this paragraph are:

(i) A proprietor of a bona fide laboratory supply house; and

(ii) Any other person who was qualified to receive bulk shipments of reagent alcohol on October 31, 2016, or who has received, from the appropriate TTB officer, approval of a letterhead application containing all of the information required by paragraph (d)(1)(ii)(A) through (D), in addition to the following:

(A) A statement that the applicant will comply with the labeling, packaging, and distribution requirements of paragraphs (c) and (d)(1) of this section; and

(B) A statement that the applicant will comply with the requirements of § 20.133.

(3) *For redistribution.* The manufacturer of the reagent alcohol, or an S.D.S. dealer, may distribute reagent alcohol in containers of any size to an S.D.S. dealer for redistribution in accordance with this section. An S.D.S. dealer distributing or redistributing reagent alcohol may repackage it in containers of any size permitted under this section that is necessary for the conduct of business.

(e) *Distribution and use of reagent alcohol in manufacturing.* Reagent alcohol is treated as S.D.A. if distributed for the purpose of manufacturing. The following requirements apply to reagent alcohol treated as S.D.A.:

(1) The manufacturer of the reagent alcohol, or an S.D.S. dealer, may distribute reagent alcohol in containers of any size to the persons specified in this paragraph for use in manufacturing.

(2) A person may receive reagent alcohol for use in manufacturing if the person:

(i) Holds a permit as an S.D.A. user;

(ii) Has received formula approval on TTB Form 5150.19 to use reagent alcohol in manufacturing; and

(iii) Treats the reagent alcohol as S.D.A., not an article.

(Approved by the Office of Management and Budget under control number 1513–0061)

§ 20.118 [Amended]

■ 27. Section 20.118(b) is amended by:

■ a. In Formula A, removing the word "ordorous" and adding, in its place, the word "odorous"; and

■ b. In Formula B, removing the term "(Bitrex (THS–839))" and adding, in its place, the term "(denatonium benzoate)".

§ 20.119 [Amended]

■ 28. In § 20.119, the introductory text is amended by:

■ a. Removing the words "shall consist of" and adding, in their place, the word "describes"; and

■ b. Removing the word "formula" the second time it appears and adding, in its place, the word "formulation".

■ 29. In subpart F, add §§ 20.120 through 20.124 to read as follows:

Subpart F—Formulas and Statements of Process

* * * * *

Sec.
20.120 Multi-purpose general-use formula.
20.121 Vinegar general-use formula.
20.122 S.D.A. 39–C general-use formula.
20.123 Pressurized container general-use formula.
20.124 Duplicating fluid and ink solvent general-use formula.

§ 20.120 Multi-purpose general-use formula.

TTB authorizes this general-use formula for the manufacture of any article that:

(a) Is made with alcohol denatured in accordance with S.D.A. Formula No. 1, 3–A, 13–A, 19, 23–A, 23–H, 30, 32, 35–A, 36, 37, 38–D, 40, 40–A, and/or 40–B, but no other specially denatured spirits formula;

(b) Conforms to one of the Use Codes specified in part 21 of this chapter authorized for the S.D.A. formulation(s) being used to make the article, other than Use Code 900, as described in part 21 of this chapter; and

(c) Contains sufficient additional ingredients, other than the denaturants prescribed for the applicable S.D.A. formula(s) —

(1) To definitely change the composition and character of the S.D.A. used to make the article, and

(2) To ensure that the finished article is unfit for beverage or other internal human use, and, unless approved under § 20.193(b), is incapable of being reclaimed or diverted to beverage use or internal human use; and

(d) Does not conform to any other general-use formula provided in subpart F of this part.

§ 20.121 Vinegar general-use formula.

The vinegar general-use formula is a formula for making vinegar with alcohol denatured in accordance with S.D.A. Formula No. 18 in a process whereby all of the ethyl alcohol, except residual alcohol within the limit specified in § 20.104, loses its identity by being converted to vinegar.

§ 20.122 S.D.A. 39–C general-use formula.

S.D.A. 39–C general-use formula is a formula for articles made with alcohol denatured in accordance with S.D.A. Formula No. 39–C. Articles made pursuant to this general-use formula shall contain, in each gallon of finished product, not less than 2 fl. oz. of perfume material (essential oils as defined in § 21.11, isolates, aromatic chemicals, etc.). Unless approved with the endorsement "for export only," all articles made with alcohol denatured in accordance with S.D.A. Formula No. 39–C must be made in accordance with this formula.

§ 20.123 Pressurized container general-use formula.

This general-use formula describes an article, made with alcohol denatured in accordance with S.D.A. Formula No. 40–C, that will be packaged in pressurized containers in which the liquid contents are in intimate contact with the propellant and from which the contents are not easily removable in liquid form.

§ 20.124 Duplicating fluid and ink solvent general-use formula.

(a) Duplicating fluids and ink solvents under this general-use formula shall be made with alcohol denatured in accordance with S.D.A. Formula No. 1, 3–A, 3–C, 13–A, 23–A, 30, 32, 35–A, or 40–B, and

(1) Shall contain, for every 100 parts (by volume) of denatured alcohol:

(i) No less than 1 part (by volume) of *n*-propyl acetate, and no less than 10 parts (by volume) of one or any combination of isopropyl alcohol or methyl alcohol; or

(ii) No less than 5 parts (by volume) of n-propyl acetate; and

(2) May contain additional ingredients.

(b) Duplicating fluids and ink solvents are intended for use in the printing industry, shall not be sold for general solvent use, and shall not be distributed through retail channels for sale as consumer commodities for personal or household use.

§ 20.131 [Amended]

■ 30. In § 20.131, the second sentence is amended by adding the word "in" after the words "general terms".

■ 31. Section 20.132 is amended by adding a new paragraph (d) to read as follows:

§ 20.132 General requirements.

* * * * *

(d) *Analytical tolerance.* In the case of an article manufactured in accordance with a formula that specifies exact amounts of ingredients, including denatured spirits, TTB will apply an analytical tolerance of ±5% and use standard rounding rules in determining whether the article complies with the formula.

■ 32. In § 20.133, paragraph (b) is revised, paragraph (c) is added, and the Office of Management and Budget control number referenced at the end of the section is revised to read as follows:

§ 20.133 Registration of persons trafficking in articles.

* * * * *

(b) A person who reprocesses articles shall ensure that each article containing 0.5 percent or more alcohol by weight or volume is unfit for beverage or internal human use and is incapable of being reclaimed or diverted to beverage use or internal human use.

(c) The appropriate TTB officer will prohibit any of the activities described in paragraph (a) of this section if the activity jeopardizes the revenue or increases the burden of administering this part.

(Approved by the Office of Management and Budget under control number 1513–0061)

■ 33. In § 20.134, paragraph (a) and the Office of Management and Budget control number referenced at the end of the section are revised to read as follows:

§ 20.134 Labeling.

(a) *General.* Except as otherwise provided in paragraph (b) or (c) of this section, the immediate container of each article shall, before removal from the manufacturer's premises, bear the following information either directly on the container or on a label securely attached to it:

(1) The name, trade name or brand name of the article; and

(2) The name and address (city and State) of the manufacturer or distributor of the article.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0061)

■ 34. Section 20.136 is revised to read as follows:

§ 20.136 Labeling regulations of other agencies.

Other Federal agencies have promulgated regulations that may affect the labeling of denatured spirits or articles. Manufacturers are responsible for properly labeling denatured spirits and articles in compliance with all applicable regulations of those other Federal agencies, which may include:

(a) The Consumer Product Safety Commission, which has promulgated regulations to administer the Federal Hazardous Substances Act, which include regulations in 16 CFR chapter II that require warning labels for products containing certain specified substances like methyl alcohol, which is a denaturant in formulations of S.D.A. Formula Nos. 3–A and 30, and is a hazardous substance at levels of 4 percent or more by weight;

(b) The Federal Trade Commission, which has promulgated regulations in 16 CFR chapter I to administer the Fair Packaging and Labeling Act, which affect the packaging and labeling of "consumer commodities" (which generally means products intended for retail sale to an individual for personal or household use);

(c) The Food and Drug Administration, which has promulgated regulations in 21 CFR chapter I to administer the Fair Packaging and Labeling Act (as it applies to drugs, medical devices, or cosmetics) and the Federal Food, Drug and Cosmetic Act; and

(d) The Occupational Safety and Health Administration, which administers the Occupational Safety and Health Act of 1970 and has promulgated regulations in 29 CFR chapter XVII concerning the communication of hazards.

§ 20.141 [Amended]

■ 35. In § 20.141, paragraph (a) is amended by removing the word "formula" the first time it appears, and adding, in its place, the word "formulation", and by adding the words "formulations of" after the words "For example,".

§ 20.163 [Amended]

■ 36. In § 20.163:

■ a. Paragraph (d) is amended by removing the words "of bill or lading" and adding, in their place, the words "or bill of lading"; and

■ b. The parenthetical phrase at the end of the section is amended by removing the Office of Management and Budget control number "1512–0337" and adding, in its place, the number "1513–0062".

§ 20.170 [Amended]

■ 37. Section 20.170 is amended by removing the word "formula" and adding, in its place, the word "formulation".

§ 20.175 [Amended]

■ 38. In § 20.175, paragraph (c) is amended by adding to the end of the sentence the words, "except as provided in 26 U.S.C. 5001(a)(4) and (5)".

■ 39. Section 20.183 is added under the undesignated center heading "Operations by Dealers" to read as follows:

§ 20.183 Exportation of S.D.S.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a dealer may export S.D.S. that conform to a formula specified in part 21 of this chapter to any country that allows the importation of such spirits. The exporting dealer shall:

(1) For each export shipment, prepare TTB Form 5100.11 in accordance with its instructions as a notice and submit it to the appropriate TTB officer;

(2) Mark each shipping container and case with the words "For Export";

(3) Export the S.D.S. directly; and

(4) Retain appropriate documentation, such as invoices and bills of lading, as evidence that the denatured spirits were, in fact, exported.

(b) *Exception.* A dealer may not export under paragraph (a) of this section any spirits that conform to Formula No. 3–C, 29, or 38–B.

■ 40. Section 20.189 is amended by revising paragraphs (c) and (d) to read as follows:

§ 20.189 Use of S.D.S.

* * * * *

(c) Unless otherwise authorized by the appropriate TTB officer, each formulation of S.D.S. may be used only for the purposes authorized for that formulation under part 21 of this chapter.

(d) By the use of essential oils and/or chemicals in the manufacture of each article containing 0.5 percent or more alcohol by weight or volume, the manufacturer shall ensure that:

(1) Each finished article is unfit for beverage use; and

(2) Unless approved "for export only" under § 20.193(b), each finished article is incapable of being reclaimed or diverted to beverage use or internal human use.

* * * * *

§ 20.191 [Amended]

■ 41. Section 20.191 is amended by removing the last sentence.

■ 42. Section 20.193 is added to subpart I to read as follows:

§ 20.193 Articles for export.

(a) Articles approved without qualification, including articles made in accordance with one of the general-use formulas in §§ 20.111 through 20.124, may be exported without restriction.

(b) For each article for which the approved formula is endorsed "For Export Only" the manufacturer shall:

(1) Label the immediate container to clearly show that the article is for export (for example, with the words "For export only", "Not for sale in the United States", or "Manufactured for sale in ______");

(2) Mark the shipping containers and cases with the words "For Export";

(3) Export the article directly; and

(4) Retain appropriate documentation, such as invoices and bills of lading, as evidence that the article was, in fact, exported.

(c) All articles for export shall comply with the applicable requirements of the countries to which they are sent.

■ 43. In § 20.204, paragraph (c) is revised to read as follows:

§ 20.204 Incomplete shipments.

* * * * *

(c) Subject to the limitations for loss prescribed in § 20.202, the shipper (dealer or distilled spirits plant proprietor) shall file a claim for allowance of the entire quantity lost, in the manner provided in that section. The claim shall include the applicable data required by § 20.205.

■ 44. Section 20.222 is revised to read as follows:

§ 20.222 Destruction.

(a) *Record of destruction.* A permittee who destroys specially denatured spirits or recovered alcohol, or who transfers such material to another entity for destruction, shall prepare a record of destruction, which shall be maintained by the permittee with the records required by subpart P of this part. The record shall identify—

(1) The reason for destruction,

(2) The date, time, location and manner of destruction,

(3) The quantity involved and, if applicable, identification of containers, and

(4) The name of the individual who accomplished or supervised the destruction.

(b) *Destruction by nonpermittees.* In general, the destruction of specially denatured spirits and recovered alcohol shall be performed by a permittee or a distilled spirits plant. However, a nonpermittee may destroy recovered alcoholic material if the material has been determined by the appropriate TTB officer to be equivalent to an article. If the material is not so determined, destruction may only occur on the premises of the manufacturer who recovered the material, a distilled spirits plant, or a dealer permittee.

(Approved by the Office of Management and Budget under control number 1513–0062)

§ 20.262 [Amended]

■ 45. Section 20.262 is amended by removing the word "formula" each place it occurs and adding in its place the word "formulation".

§ 20.263 [Amended]

■ 46. Section 20.263 is amended by removing the word "formula" each place it occurs and adding in its place the word "formulation".

■ 47. In § 20.264, paragraphs (a)(1) and (2) are revised, paragraph (a)(4) is added, and the Office of Management and Budget control number referenced at the end of the section is revised to read as follows:

§ 20.264 User's records and report of products and processes.

(a) *Records.* (1) Each user shall maintain separate accountings of—

(i) The number of gallons of each formulation of new S.D.S. used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter; and

(ii) The number of gallons of each formulation of recovered S.D.S. used for each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

(2) Each user who recovers specially denatured spirits shall maintain separate accountings of the number of gallons of each formulation of specially denatured spirits recovered from each product or process, recorded by the code number prescribed by § 21.141 of this chapter.

* * * * *

(4) Each user who manufactures articles for export subject to § 20.193(b) shall retain the documentation required by § 20.193(b)(4).

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0062)

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

■ 48. The authority citation of part 21 continues to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5242, 7805.

■ 49. Part 21 is amended by removing the abbreviation "ml" each place it occurs within the part and adding, in its place, the abbreviation "mL".

§ 21.7 [Amended]

■ 50. In § 21.7, the second sentence is amended by adding the words "the current version of" immediately before the words "TTB Order 1135.21".

§ 21.11 [Amended]

■ 51. In § 21.11:

■ a. The definition of "Appropriate TTB Officer" is amended by adding the words "the current version of" immediately before the words "TTB Order 1135.21"; and

■ b. The definition of "C.D.A." is amended by removing the word "Completly" and adding, in its place, the word "Completely".

■ 52. In § 21.21 add paragraph (d) to read as follows:

§ 21.21 General.

* * * * *

(d) TTB will apply an analytical tolerance of ±5 percent and use standard rounding rules in determining whether completely denatured alcohol complies with the formula prescribed in this subpart (or in accordance with § 21.5).

■ 53. In § 21.24, paragraph (a) is revised to read as follows:

§ 21.24 Formula No. 20.

(a) *Formula.* To every 100 gallons of ethyl alcohol of not less than 195 proof add:

A total of 2.0 gallons of either unleaded gasoline, rubber hydrocarbon solvent, kerosene, deodorized kerosene, alkylate, ethyl tertiary butyl ether, high octane denaturant blend, methyl tertiary butyl ether, naphtha, natural gasoline, raffinate, or any combination of these; or

A total of 5.0 gallons of toluene.

* * * * *

■ 54. In subpart C, § 21.25 is added to read as follows:

§ 21.25 Formula No. 35.

Formula. To every 100 gallons of alcohol of not less than 185 proof add:

29.75 gallons of ethyl acetate having an ester content of 100 percent by weight or the equivalent thereof not to exceed 35 gallons of ethyl acetate with an ester content of not less than 85 percent by weight.

■ 55. In subpart C, § 21.26 is added to read as follows:

§ 21.26 Formula No. 12–A.

Formula. To every 100 gallons of alcohol of not less than 185 proof add:

Five gallons of toluene or 5 gallons of heptane.

■ 56. Section 21.31 is amended by adding paragraph (d) to read as follows:

§ 21.31 General.

* * * * *

(d) *Analytical tolerance.* TTB will apply an analytical tolerance of ±5% and use standard rounding rules in determining whether specially denatured spirits complies with the formula prescribed in this subpart (or in accordance with § 21.5).

■ 57. In § 21.33, paragraph (a) is revised to read as follows:

§ 21.33 Formula No. 2–B.

(a) *Formula.* To every 100 gallons of alcohol add:

One-half gallon of rubber hydrocarbon solvent, ½ gallon of toluene, ½ gallon of heptane, ½ gallon of hexane (mixed isomers), or ½ gallon of *n*-hexane.

* * * * *

§ 21.34 [Removed and Reserved]

■ 58. Section 21.34 is removed and reserved.

§ 21.35 [Amended]

■ 59. In § 21.35, paragraph (a) is amended by adding the words "cyclohexane or" before the words "methyl alcohol."

§ 21.36 [Removed and Reserved]

■ 60. Section 21.36 is removed and reserved.

§§ 21.39 and 21.40 [Removed and Reserved]

■ 61. Sections 21.39 and 21.40 are removed and reserved.

§ 21.41 [Amended]

■ 62. In § 21.41, paragraph (b) is amended by adding the words "485. Miscellaneous solutions." in appropriate numerical order.

§ 21.42 [Removed and Reserved]

■ 63. Section 21.42 is removed and reserved.

§§ 21.45 and 21.46 [Removed and Reserved]

■ 64. Sections 21.45 and 21.46 are removed and reserved.

§ 21.48 [Removed and Reserved]

■ 65. Section 21.48 is removed and reserved.

§ 21.49 [Amended]

■ 66. In § 21.49, paragraph (b)(1) is amended by removing the word "insectides" from the entry beginning "410" and adding, in its place, the word "insecticides".

§§ 21.52 through 21.54 [Removed and Reserved]

■ 67. Sections 21.52 through 21.54 are removed and reserved.

§ 21.59 [Amended]

■ 68. In § 21.59, paragraph (b) is amended by adding the words "485. Miscellaneous solutions." in appropriate numerical order.

§§ 21.60 and 21.61 [Removed and Reserved]

■ 69. Sections 21.60 and 21.61 are removed and reserved.

§ 21.62 [Amended]

■ 70. In § 21.62, paragraph (b)(1) is amended by adding the words "052. Inks." and "485. Miscellaneous solutions." in appropriate numerical order.

§ 21.63 [Amended]

■ 71. In § 21.63, paragraph (a) is amended by adding the words "8.75 pounds of potassium hydroxide, on an anhydrous basis;" before the words "or 12.0 pounds of caustic soda,".

§ 21.64 [Amended]

■ 72. Section 21.64(a) is amended by removing the word "onces" and adding, in its place, the word "ounces".

§ 21.65 [Amended]

■ 73. In § 21.65, the list in paragraph (a) is amended by adding entries reading "Cornmint oil.", "Distilled lime oil.", "L(–)–Carvone.", "Lemon oil.", and "Peppermint oil, Terpeneless.", in appropriate alphabetical order, and paragraph (b)(1) is amended by removing the word "Sterlizing" from the entry beginning "430" and adding, in its place, the word "Sterilizing".

§ 21.66 [Removed and Reserved]

■ 74. Section 21.66 is removed and reserved.

■ 75. In § 21.68, paragraphs (a)(1) and (2) are revised to read as follows:

§ 21.68 Formula No. 38–F.

(a) * * *

(1) Six pounds of either boric acid, N.F., Polysorbate 80, N.F., or Poloxamer 407, N.F.; $1\frac{1}{3}$ pounds of thymol, N.F.; $1\frac{1}{3}$ pounds of chlorothymol, N.F. XII; and $1\frac{1}{3}$ pounds of menthol, U.S.P.; or

(2) A total of at least 3 pounds of any two or more denaturing materials listed under Formula No. 38–B, plus sufficient boric acid, N.F., Polysorbate 80, N.F., or Poloxamer 407, N.F. to total 10 pounds of denaturant; or

* * * * *

§§ 21.69 and 21.70 [Removed and Reserved]

■ 76. Sections 21.69 and 21.70 are removed and reserved.

§ 21.76 [Amended]

■ 77. In § 21.76, paragraph (b)(1) is amended by adding the words "052. Inks." and "485. Miscellaneous solutions." in appropriate numerical order.

§ 21.78 [Removed and Reserved]

■ 78. Section 21.78 is removed and reserved.

§ 21.81 [Removed and Reserved]

■ 79. Section 21.81 is removed and reserved.

§ 21.91 [Amended]

■ 80. Section 21.91 is amended by adding a sentence at the end of the section to read as follows:

§ 21.91 General.

* * * The authorization of a substitute denaturant may be published in a TTB Ruling.

■ 81. Section 21.94–T is added to read as follows:

§ 21.94–T Alkylate.

(a) *API gravity at 60 °F.* 70.4.

(b) *Reid vapor pressure (PSI).* 5.60 maximum.

(c) *Distillation (°F):*

(i) *I.B.P.* 109.0.

(ii) *10 percent.* 186.6.

(iii) *50 percent.* 221.1.

(iv) *90 percent.* 271.8.

(v) *End point distillation.* 375.7.

§§ 21.97 and 21.98 [Removed and Reserved]

■ 82. Sections 21.97 and 21.98 are removed and reserved.

§§ 21.103 and 21.104 [Removed and Reserved]

■ 83. Sections 21.103 and 21.104 are removed and reserved.

■ 84. Section 21.105–T1 is added to read as follows:

§ 21.105–T1 Cornmint oil (Mentha arvensis and Mentha canadensis).

(a) *Specific gravity at 25 °C.* 0.895 to 0.905.

(b) *Refractive index at 20 °C.* 1.4580 to 1.4590.

(c) *Optical rotation at 20 °C.* −18° to −36°.

(d) *Alcohol content (as menthol).* 65 percent minimum.

(e) *Ketone content (as menthone).* 5 percent minimum.

■ 85. Section 21.105–T2 is added to read as follows:

§ 21.105–T2 Cyclohexane.

(a) *Specific gravity at 20 °C.* 0.75 to 0.80.

(b) *Odor.* Characteristic odor.

■ 86. Section 21.106–T is added to read as follows:

§ 21.106–T Distilled lime oil (Citrus aurantifolia).

(a) *Specific gravity at 25 °C.* 0.850 to 0.870.

(b) *Refractive index at 20 °C.* 1.4740 to 1.4780.

(c) *Optical rotation at 20 °C.* +30° to +50°.

(d) *Aldehyde content (as citral).* 0.5 to 3.0 percent.

(e) *Terpene content (as limonene).* 45 percent minimum.

■ 87. Section 21.108–T is added to read as follows:

§ 21.108–T Ethyl tertiary butyl ether.

(a) *Purity.* ≥95.0 percent.

(b) *Color.* Colorless to light yellow.

(c) *Odor.* Terpene-like.

(d) *Specific gravity at 20 °C.* 0.70 to 0.80.

(e) *Boiling point (°C).* 73.

§ 21.111 [Removed and Reserved]

■ 88. Section 21.111 is removed and reserved.

■ 89. Section 21.112–T1 is added to read as follows:

§ 21.112–T1 Hexane (mixed isomers).

(a) *General.* Minimum 55 percent *n*-hexane.

(b) *Distillation range.* No distillate should come over below 150 °F and none above 160 °F.

(c) *Odor.* Characteristic odor.

■ 90. Section 21.112–T2 is added to read as follows:

§ 21.112–T2 *n*-Hexane.

(a) *General.* Minimum 97 percent purity.

(b) *Distillation range.* No distillate should come over below 150 °F and none above 160 °F.

(c) *Odor.* Characteristic odor.

■ 91. Section 21.112–T3 is added to read as follows:

§ 21.112–T3 High octane denaturant blend.

(a) *API Gravity at 60 °F.* 40 to 65.

(b) *Reid Vapor Pressure (PSI).* 6 to 15.

(c) *Isopropyl alcohol.* 24 to 40 percent volume.

(d) *Methyl alcohol.* 1.6 to 9.6 percent volume.

(e) *Diisopropyl ether (DIPE).* 4 to 12 percent volume.

(f) *tert-Butyl alcohol.* 4 to 12 percent volume.

(g) *Iso-pentane.* 4 to 9 percent volume.

(h) *Pentane.* 4 to 9 percent volume.

(i) *Pentene.* 0 to 2.4 percent volume.

(j) *Hexane.* 2 to 6 percent volume.

(k) *Heptane.* 1 to 3 percent volume.

(l) *Sulfur (ppm).* 0 to 120.

(m) *Benzene (% vol.).* 0 to 1.1.

(n) *Distillation (°F):*

(i) *10 percent.* 80 to 168.

(ii) *50 percent.* 250.

(iii) *End point distillation.* 437.

■ 92. Section 21.115–T1 is added to read as follows:

§ 21.115–T1 Lemon oil (Citrus limonium).

(a) *Specific gravity at 25 °C.* 0.850 to 0.860.

(b) *Refractive index at 20 °C.* 1.4570 to 1.4580.

(c) *Optical rotation at 20 °C.* +55° to +65°.

(d) *Terpene content (as limonene).* 65 percent minimum.

■ 93. Section 21.115–T2 is added to read as follows:

§ 21.115–T2 L(−)-Carvone.

(a) *Specific gravity at 25 °C.* 0.955 to 0.965.

(b) *Refractive index at 20 °C.* 1.495 to 1.500.

(c) *Angular rotation.* –57° to –62°.

(d) *Assay.* Not less than 97.0 percent.

■ 94. Section 21.118–T1 is added to read as follows:

§ 21.118–T1 Methyl tertiary butyl ether.

(a) *Purity.* ≥ 97.0 percent.

(b) *Color.* Clear, colorless.

(c) *Odor.* Turpentine-like.

(d) *Specific Gravity at 20 °C.* 0.70 to 0.80.

(e) *Boiling Point (°C).* 55.

■ 95. Section 21.118–T2 is added to read as follows:

§ 21.118–T2 Naphtha.

(a) *API Gravity at 60 °F.* 30 to 85.

(b) *Reid Vapor Pressure (PSI).* 8 maximum.

(c) *Specific Gravity at 20 °C.* 0.70 to 0.80.

(d) *Distillation (°F):*

(i) *I.B.P.* 85 maximum.

(ii) *10 percent.* 130 maximum.

(iii) *50 percent.* 250 maximum.

(iv) *90 percent.* 340 maximum.

(e) *End point distillation.* 380 maximum.

(f) *Copper corrosion.* One (1).

(g) *Sabolt color.* 28 minimum.

■ 96. Section 21.118–T3 is added to read as follows:

§ 21.118–T3 Natural gasoline.

Natural gasoline is a mixture of various alkanes including butane, pentane, and hexane hydrocarbons extracted from natural gas. It has a distillation range wherein no more than 10 percent by volume of the sample may distill below 97 °F; at least 50 percent by volume shall distill at or below 156 °F; and at least 90 percent by volume shall distill at or below 209 °F.

■ 97. Section 21.121 is revised to read as follows:

§ 21.121 Peppermint oil, Terpeneless.

(a) *Specific gravity at 25 °C.* 0.890 to 0.910.

(b) *Refractive index at 20 °C.* 1.455 to 1.465.

(c) *Esters as menthyl acetate.* 5 percent minimum.

(d) *Menthol (free and esters).* 5 percent minimum.

■ 98. Section 21.122 is revised to read as follows:

§ 21.122 Potassium Hydroxide.

(a) *Color.* White or yellow.

(b) *Specific gravity at 20 °C.* 1.95 to 2.10.

(c) *Melting point.* 360 °C.

(d) *Boiling point.* 1320 °C.

(e) *pH (0.1M solution).* 13.5.

■ 99. Section 21.124–T is added to read as follows:

§ 21.124–T Raffinate.

(a) *API Gravity at 60 °F.* 30 to 85.

(b) *Reid Vapor Pressure (PSI).* 5 to 11.

(c) *Octane (R+M/2).* 66 to 70.

(d) *Distillation (°F):*

(i) *10 percent.* 120 to 150.

(ii) *50 percent.* 144 to 180.

(iii) *90 percent.* 168 to 200.

(iv) *End point distillation.* 216 to 285.

§ 21.125 [Amended]

■ 100. In § 21.125, the first sentence of paragraph (b) is amended by removing the word “themometer” and adding, in its place, the word “thermometer”.

§ 21.128 [Removed and Reserved]

■ 101. Section 21.128 is removed and reserved.

■ 102. Section 21.130–T is added to read as follows:

§ 21.130–T Straight run gasoline.

(a) *General.* Straight run gasoline is a mixture consisting predominantly (greater than 60 percent by volume) of C_4, C_5, C_6, C_7 and/or C_8 hydrocarbons, and is either:

(1) A petroleum distillate coming straight from an atmospheric distillation unit without being cracked or reformed, or

(2) A condensate coming directly from an oil/gas recovery operation.

(b) *API gravity.* 72° minimum, 85° maximum.

(c) *Reid vapor pressure (PSI).* 15 maximum.

(d) *Sulfur.* 120 ppm maximum.

(e) *Benzene.* 1.1 percent by volume maximum.

(f) *Distillation (°F):*

(1) *10 percent.* 97 minimum, 158 maximum.

(2) *50 percent.* 250 maximum.

(3) *Final boiling point.* 437 maximum.

■ 103. Section 21.132 is revised to read as follows:

§ 21.132 Toluene.

(a) *Specific Gravity at 15.56°/15.56 °C.* 0.80 to 0.90.

(b) *Boiling point (°C).* 110.6.

(c) *Distillation range (°C).* Not more than 1 percent by volume should distill below 109, and not less than 99 percent by volume below 112.

(d) *Odor.* Characteristic odor.

■ 104. In § 21.141, the table is amended by:

■ a. Removing the entry for "Antiseptic, bathing solution (restricted)";

■ b. Removing each reference to "2–C", "3–B", "6–B", "12– A", "17", "20", "22", "23–F", "27", "27–A", "27–B", "33", "35", "38–C", "39", "39–A", "42", and "46" in the column headed "Formulas authorized"; and

■ c. Revising the entries for "Inks" and for "Solutions, miscellaneous".

The revisions read as follows:

§ 21.141 List of products and processes using specially denatured alcohol and rum, and formulas authorized therefor.

* * * * *

Product or process	Code No.	Formulas authorized
* *	*	* * * *
Inks	052	1, 3–A, 3–C, 13–A, 23–A, 30, 32, 33, 35–A, 40–B.
* *	*	* * * *
Solutions, miscellaneous	485	1, 3–A, 3–C, 13–A, 23–A, 30, 32, 35–A, 40–B, 40–C.
* *	*	* * * *

* * * * *

§ 21.151 [Amended]

■ 105. In § 21.151, the table is amended by:

■ a. Removing the entries for "Benzene"; "Bone oil (Dipple's oil)"; "Chloroform"; "Cinchonidine"; "Cinchonidine sulfate, N.F. IX"; "Gentian violet"; "Gentian violet, U.S.P"; "Mercuric iodide, red N.F. XI"; "Phenyl mercuric benzoate"; "Phenyl mercuric chloride, N.F. IX"; "Phenyl mercuric nitrate, N.F"; "Pine tar, U.S.P"; "Pyridine bases"; "Quassia, fluid extract, N.F. VII"; "Quinine, N.F. X"; "Quinine dihydrochloride, N.F. XI"; "Resorcinol (Resorcin), U.S.P"; "Salicylic acid, U.S.P"; "Sodium, metallic"; and "Thimerosal, U.S.P";

■ b. Removing each remaining reference to "2–C", "22", "23–F", "27", "27–A", "27–B", "38–C", "39", "39–A", "42", and "46"; and

■ c. Revising the entries for "Ethyl acetate", and "Toluene"; and

■ d. Adding entries for "Alkylate", "Cornmint oil", "Cyclohexane", "Distilled lime oil", "Ethyl tertiary butyl ether", "Hexane", "*n*-Hexane", "High octane denaturant blend", "L(–)-Carvone", "Lemon oil", "Methyl tertiary butyl ether", "Naphtha", "Natural gasoline", "Peppermint oil, terpeneless.", "Poloxamer 407 N.F.", "Potassium hydroxide", "Raffinate", and "Straight run gasoline".

The revisions and additions read as follows:

§ 21.151 List of denaturants authorized for denatured spirits.

* * * * *

Alkylate	C.D.A. 20.
* * * *	*
Cornmint oil	S.D.A. 38–B.
Cyclohexane	S.D.A. 3–A.
* * * *	*
Distilled lime oil	S.D.A. 38–B.
* * * *	*
Ethyl acetate	C.D.A. 35; S.D.A. 29, 35–A.
* * * *	*
Ethyl tertiary butyl ether.	C.D.A. 20.
* * * *	*
Hexane	S.D.A. 2–B.
n-Hexane	S.D.A. 2–B.
* * * *	*
High octane denaturant blend.	C.D.A. 20.
* * * *	*
L(–)-Carvone	S.D.A. 38–B.
* * * *	*
Lemon oil	S.D.A. 38–B.
* * * *	*
Methyl tertiary butyl ether.	C.D.A. 20.
* * * *	*
Naphtha	C.D.A. 20.
Natural gasoline	C.D.A. 20.
* * * *	*
Peppermint oil, terpeneless.	S.D.A. 38–B.
* * * *	*
Poloxamer 407, N.F.	S.D.A. 38–F.
* * * *	*
Potassium hydroxide	S.D.A. 36.
* * * *	*
Raffinate	C.D.A. 20.
* * * *	*
Straight run gasoline	C.D.A. 20.
* * * *	*
Toluene	C.D.A. 12–A; S.D.A. 2–B.
* * * *	*

§ 21.161 [Amended]

■ 106. In § 21.161, the table is revised by removing the entries for "2–C", "3–B", "6–B", "12–A", "17", "20", "22", "23–F", "27", "27–A", "27–B", "33", "35[3]", "35[4]", "38–C", "39", "39–A", "42", and "46".

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 107. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

■ 108. Section 27.222 is added to read as follows:

§ 27.222 Importation of denatured spirits and fuel alcohol.

Denatured spirits and fuel alcohol are treated as spirits for purposes of this part and are subject to tax pursuant to § 27.40(a). The tax must be paid upon importation, with only two exceptions: Spirits may be withdrawn from customs custody free of tax for the use of the United States under subpart M of this part; and spirits may be withdrawn from customs custody and transferred to a distilled spirits plant, including a bonded alcohol fuel plant, without payment of tax under subpart L of this part. After transfer pursuant to subpart L, denatured spirits or fuel alcohol may be withdrawn free of tax in accordance with part 19 of this chapter if they meet the standards to conform either to a denatured spirits formula specified in part 21 of this chapter (for withdrawal from a regular distilled spirits plant) or a formula specified in § 19.746 of this chapter (for withdrawal from an alcohol fuel plant). Such withdrawal is permitted, even though the denaturation or rendering unfit for beverage use may have occurred, in whole or in part, in a foreign country. For purposes of this chapter, the denaturation or rendering unfit is deemed to have occurred at the distilled spirits plant (including the alcohol fuel plant), the proprietor of which is responsible for compliance with part 21 or § 19.746, as the case may be. Imported fuel alcohol shall also conform to the requirements of 27 CFR 19.742.

PART 28—EXPORTATION OF LIQUORS

■ 109. The authority citation for part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205, 44 U.S.C. 3504(h).

■ 110. Section 28.157 is added to read as follows:

§ 28.157 Exportation by dealer in specially denatured spirits.

A dealer in specially denatured spirits who holds a permit under part 20 of this chapter may export specially denatured spirits in accordance with § 20.183 of this chapter.

Signed: July 6, 2016.

John J. Manfreda,

Administrator.

Approved: July 7, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–20712 Filed 8–29–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB71

Savings Arrangements Established by States for Non-Governmental Employees

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document describes circumstances in which state payroll deduction savings programs with automatic enrollment would not give rise to the establishment of employee pension benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document provides guidance for states in designing such programs so as to reduce the risk of ERISA preemption of the relevant state laws. This document also provides guidance to private-sector employers that may be covered by such state laws. This rule affects individuals and employers subject to such state laws.

DATES: This rule is effective October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Janet Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately 39 million employees in the United States do not have access to a retirement savings plan through their employers.[1] Even though such employees could set up and contribute to their own individual retirement accounts or annuities (IRAs), the great majority do not save for retirement. In fact, less than 10 percent of all workers contribute to a plan outside of work.[2]

For older Americans, inadequate retirement savings can mean sacrificing or skimping on food, housing, health care, transportation, and other necessities. In addition, inadequate retirement savings places greater stress on state and federal social welfare programs as guaranteed sources of income and economic security for older Americans. Accordingly, states have a substantial governmental interest to encourage retirement savings in order to protect the economic security of their residents.[3] Concern over the low rate of saving among American workers and the lack of access to workplace plans for many of those workers has led some state governments to expand access to savings programs for their residents and other individuals employed in their jurisdictions by creating their own programs and requiring employer participation.[4]

A. State Payroll Deduction Savings Initiatives

One approach some states have taken is to establish state payroll deduction savings programs. Through automatic enrollment such programs encourage employees to establish tax-favored IRAs funded by payroll deductions.[5] California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines.[6] These initiatives generally require certain employers that do not offer workplace savings arrangements to automatically deduct a specified amount of wages from their employees' paychecks unless the employee affirmatively chooses not to participate in the program.[7] The employers are also required to remit the payroll deductions to state-administered IRAs established for the employees. These programs also allow employees to stop the payroll deductions at any time. The programs, as currently designed, do not require, provide for or permit employers to make matching or other contributions of their own into the employees' accounts. In addition, the state initiatives typically require that employers provide employees with information prepared or assembled by the program, including information on employees' rights and various program features.

---

[1] National Compensation Survey, Bureau of Labor Statistics (July 2016), Employee Benefits in the United States—March 2016 (*http://www.bls.gov/news.release/pdf/ebs2.pdf*). These data show that 66 percent of 114 million private-sector workers have access to a retirement plan through work. Therefore, 34 percent of 114 million private-sector workers (39 million) do not have access to a retirement plan through work.

[2] *See* The Pew Charitable Trust, "How States Are Working to Address The Retirement Savings Challenge," (June 2016) (*http://www.pewtrusts.org/~/media/assets/2016/06/howstatesareworkingtoaddresstheretirementsavingschallenge.pdf*).

[3] *See* Christian E. Weller, Ph.D., Nari Rhee, Ph.D., and Carolyn Arcand, "Financial Security Scorecard: A State-by-State Analysis of Economic Pressures Facing Future Retirees," National Institute on Retirement Security (March 2014) (*www.nirsonline.org/index.php?option=com_content&task=view&id=830&Itemid=48*).

[4] *See, e.g.,* Kathleen Kennedy Townsend, Chair, Report of the Governor's Task Force to Ensure Retirement Security for All Marylanders, "1,000,000 of Our Neighbors at Risk: Improving Retirement Security for Marylanders" (2015).

[5] These could include individual retirement accounts described in 26 U.S.C. 408(a), individual retirement annuities described in 26 U.S.C. 408(b), and Roth IRAs described in 26 U.S.C. 408A.

[6] California Secure Choice Retirement Savings Trust Act, Cal. Gov't Code §§ 100000–100044 (2012); Connecticut Retirement Security Program Act, P.A. 16–29 (2016); Illinois Secure Choice Savings Program Act, 820 Ill. Comp. Stat. 80/1–95 (2015); Maryland Small Business Retirement Savings Program Act, Ch. 324 (H.B. 1378)(2016); Oregon Retirement Savings Board Act, Ch. 557 (H.B. 2960)(2015).

B. ERISA's Regulation of Employee Benefit Plans

Section 3(2) of ERISA defines the terms "employee pension benefit plan" and "pension plan" broadly to mean, in relevant part "[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program provides retirement income to employees. . . ."[8] The Department and the courts have broadly interpreted "established or maintained" to require only minimal involvement by an employer or employee organization.[9] An employer could, for example, establish an employee benefit plan simply by purchasing insurance products for individual employees. These expansive definitions are essential to ERISA's purpose of protecting plan participants by ensuring the security of promised benefits.

Due to the broad scope of ERISA coverage, some stakeholders have expressed concern that state payroll deduction savings programs, such as those enacted in California, Connecticut, Illinois, Maryland, and Oregon may cause covered employers to inadvertently establish ERISA-covered plans, despite the express intent of the states to avoid such a result. This uncertainty, together with ERISA's broad preemption of state laws that "relate to" private-sector employee pension benefit plans has created a serious impediment to wider adoption of state payroll deduction savings programs.[10]

C. 1975 IRA Payroll Deduction Safe Harbor

Although IRAs generally are not set up by employers or employee organizations, ERISA coverage may be triggered if an employer (or employee organization) does, in fact, "establish or maintain" an IRA arrangement for its employees. 29 U.S.C. 1002(2)(A).[11] In contexts not involving state payroll deduction savings programs, the Department has previously issued guidance to help employers determine whether their involvement in certain voluntary payroll deduction savings arrangements involving IRAs would result in the employers having established or maintained ERISA-covered plans. That guidance included a 1975 "safe harbor" regulation under 29 CFR 2510.3–2(d) setting forth circumstances under which IRAs funded by payroll deductions would not be treated as ERISA plans, and a 1999 Interpretive Bulletin clarifying that certain ministerial activities will not cause an employer to have established an ERISA plan simply by facilitating such payroll deduction savings arrangements.[12]

The 1975 regulation provides that certain IRA payroll deduction arrangements are not subject to ERISA if four conditions are met: (1) The employer makes no contributions; (2) employee participation is "completely voluntary"; (3) the employer does not endorse the program and acts as a mere facilitator of a relationship between the IRA vendor and employees; and (4) the employer receives no consideration except for its own expenses.[13] In essence, if the employer merely allows a vendor to provide employees with information about an IRA product and then facilitates payroll deduction for employees who voluntarily initiate action to sign up for the vendor's IRA, the employer will not have established, and the arrangement will not be, an ERISA pension plan.

With regard to the 1975 IRA Payroll Deduction Safe Harbor's condition requiring that an employee's participation be "completely voluntary," the Department intended this term to mean that the employee's enrollment in the program must be self-initiated. In other words, under the safe harbor, the decision to enroll in the program must be made by the employee, not the employer. If the employer automatically enrolls employees in a benefit program, the employees' participation would not be "completely voluntary" and the employer's actions would constitute the "establishment" of a pension plan, within the meaning of ERISA section 3(2). This is true even if the employee can affirmatively opt out of the program.[14] Thus, arrangements that allow employers to automatically enroll employees—as do all existing state payroll deduction savings programs—do not satisfy the condition in the safe harbor that the employees' participation be "completely voluntary," even if the employees are permitted to "opt out" of the program. Consequently, such programs would fall outside the 1975 safe harbor and could be subject to ERISA.

---

[7] Workplace savings arrangements may include plans such as those qualified under or described in 26 U.S.C. 401(a), 401(k), 403(a), 403(b), 408(k) or 408(p), and may constitute either ERISA or non-ERISA arrangements.

[8] 29 U.S.C. 1002(2)(A). ERISA's Title I provisions "shall apply to any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce." 29 U.S.C. 1003(a). Section 4(b) of ERISA includes express exemption from coverage under Title I for governmental plans, church plans, plans maintained solely to comply with applicable state laws regarding workers compensation, unemployment, or disability, certain foreign plans, and unfunded excess benefit plans. 29 U.S.C. 1003(b).

[9] *Donovan* v. *Dillingham*, 688 F.2d 1367 (11th Cir. 1982); *Harding* v. *Provident Life and Accident Ins. Co.*, 809 F. Supp. 2d 403, 415–419 (W.D. Pa. 2011); DOL Adv. Op. 94–22A (July 1, 1994).

[10] ERISA's preemption provision, section 514(a) of ERISA, 29 U.S.C. 1144(a), provides that the Act "shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan" covered by the statute. The U.S. Supreme Court has long held that "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96–97 (1983) (footnote omitted). In various decisions, the Court has concluded that ERISA preempts state laws that: (1) mandate employee benefit structures or their administration; (2) provide alternative enforcement mechanisms; or (3) bind employers or plan fiduciaries to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself.

[11] ERISA section 404(c)(2) (simple retirement accounts); 29 CFR 2510.3–2(d) (1975 IRA payroll deduction safe harbor); 29 CFR 2509.99–1 (interpretive bulletin on payroll deduction IRAs); *Cline* v. *The Industrial Maintenance Engineering & Contracting Co.*, 200 F.3d 1223, 1230–31 (9th Cir. 2000).

[12] *See* 29 CFR 2510.3–2(d); 40 FR 34526 (Aug. 15, 1975); 29 CFR 2509.99–1. The Department has also issued advisory opinions discussing the application of the safe harbor regulation to particular facts. *See, e.g.,* DOL Adv. Op. 82–67A (Dec. 21, 1982); DOL Adv. Op. 84–25A (June 18, 1984).

[13] 29 CFR 2510.3–2(d) (1975 IRA Payroll Deduction Safe Harbor).

[14] *See generally* Proposed rule on Savings Arrangements Established by States for Non-Governmental Employees, 80 FR 72006, 72008 (November 18, 2015) (The completely voluntary condition in the 1975 safe harbor is "important because where the employer is acting on his or her own volition to provide the benefit program, the employer's actions—*e.g.,* requiring an automatic enrollment arrangement—would constitute its 'establishment' of a plan within the meaning of ERISA's text, and trigger ERISA's protections for the employees whose money is deposited into an IRA.").

D. 2015 Proposed Regulation

At the 2015 White House Conference on Aging, the President directed the Department to publish guidance to support state efforts to promote broader access to workplace retirement savings opportunities for employees. On November 18, 2015, the Department published in the **Federal Register** a proposed regulation providing that for purposes of Title I of ERISA the terms "employee pension benefit plan" and "pension plan" do not include an IRA established and maintained pursuant to a state payroll deduction savings program if that program satisfies all of the conditions set forth in the proposed rule.[15] By articulating the types of state payroll deduction savings programs that would be exempt from ERISA, the proposal sought to create a safe harbor for the states and employers and thus remove uncertainty regarding Title I coverage of such state payroll deduction savings programs and the IRAs established and maintained pursuant to them. In the Department's view, courts would be less likely to find that statutes creating state programs in compliance with the proposed safe harbor are preempted by ERISA.

The proposal parallels the 1975 IRA Payroll Deduction Safe Harbor in that it requires the employer's involvement to be no more than ministerial. 29 CFR 2510.3–2(d).[16] In both contexts, limited employer involvement in the arrangement is the key to finding that the employer has not established or maintained an employee pension benefit plan. The proposal added the conditions that employer involvement must be required under state law, and that the state must establish and administer the program pursuant to state law. Significantly, and in recognition of the fact that several state initiatives provide for automatic enrollment and therefore would not satisfy the Department's 1975 IRA Payroll Deduction Safe Harbor condition that employee participation in such programs be "completely voluntary," the proposal also adopted a new condition that employee participation be "voluntary." Because the new safe harbor requires that the employer's involvement in the program be required and circumscribed by state law, the 1975 safe harbor's condition that employee participation be "completely voluntary" has been modified to permit state-required automatic employee enrollment procedures.

The Department received and analyzed approximately 70 public comments in response to the proposed rule. The Department is issuing a final rule that contains some changes and clarifications in response to questions raised in the public comments. Those changes are described herein.

II. Overview of Final Rule

The final rule largely adopts the proposal's general structure. Thus, new paragraph (h) of § 2510.3–2 continues to provide in the final rule that, for purposes of Title I of ERISA, the terms "employee pension benefit plan" and "pension plan" do not include an individual retirement plan (as defined in 26 U.S.C. 7701(a)(37))[17] established and maintained pursuant to a state payroll deduction savings program if the program satisfies all of the conditions set forth in paragraphs (h)(1)(i) through (xi) of the regulation. Thus, if these conditions are satisfied, neither the state nor the employer is establishing or maintaining a pension plan subject to Title I of ERISA.

Most of the new safe harbor's conditions focus on the state's role in the program. The program must be specifically established pursuant to state law. 29 CFR 2510.3–2(h)(1)(i). The program is implemented and administered by the state that established the program. 29 CFR 2510.3–2(h)(1)(ii). The state must be responsible for investing the employee savings or for selecting investment alternatives from which employees may choose. *Id.* The state must be responsible for the security of payroll deductions and employee savings. 29 CFR 2510.3–2(h)(1)(iii). The state must adopt measures to ensure that employees are notified of their rights under the program, and must create a mechanism for enforcing those rights. 29 CFR 2510.3–2(h)(1)(iv). The state may implement and administer the program through its governmental agency or instrumentality. 29 CFR 2510.3–2(h)(1)(ii). The state or its governmental agency or instrumentality may also contract with others to operate and administer the program. 29 CFR 2510.3–2(h)(2)(ii).

Many of the rule's conditions limit the employer's role in the program. The employer's activities must be limited to ministerial activities such as collecting payroll deductions and remitting them to the program. 29 CFR 2510.3–2(h)(1)(vii)(A). The employer may provide notice to the employees and maintain records of the payroll deductions and remittance of payments. 29 CFR 2510.3–2(h)(1)(vii)(B). The employer may provide information to the state necessary for the operation of the program. 29 CFR 2510.3–2(h)(1)(vii)(C). The employer may distribute program information from the state program to employees. 29 CFR 2510.3–2(h)(1)(vii)(D). Employers cannot contribute employer funds to the IRAs. 29 CFR 2510.3–2(h)(1)(viii). Employer participation in the program must be required by state law. 29 CFR 2510.3–2(h)(1)(ix).

Other critical conditions focus on employee rights. For example, employee participation in the program must be voluntary. 29 CFR 2510.3–2(h)(1)(v). Thus, if the program requires automatic enrollment, employees must be given adequate advance notice and have the right to opt out. 29 CFR 2510.3–2(h)(2)(iii). In addition, employees must be notified of their rights under the program, including the mechanism for enforcement of those rights. 29 CFR 2510.3–2(h)(1)(iv).

III. Changes to Proposal Based on Public Comment

A. Ability To Experiment

The final rule contains new regulatory text in paragraph (a) of § 2510.3–2 making it clear that the rule's conditions on state payroll deduction savings programs simply create a safe harbor. A safe harbor approach to these arrangements provides to states clear guide posts and certainty, yet does not by its terms prohibit states from taking additional or different action or from experimenting with other programs or arrangements. Although the Department expressed this view in the proposal's preamble, commenters requested that this safe harbor position be explicitly incorporated into the operative text, just as the Department did previously under § 2510.3–1 with respect to certain practices excluded from the definition of "welfare plan."[18] The Department agrees that the final regulation would be improved by adding regulatory text explicitly recognizing that the regulation is a safe harbor. Adding such regulatory text clarifies the Department's intent and conforms this section with § 2510.3–1 (relating to welfare plans).

---

[15] 80 FR 72006 (November 18, 2015). On the same day that the NPRM was published, the Department also published an interpretive bulletin (IB) explaining the Department's views concerning the application of ERISA to certain state laws designed to expand retirement savings options for private-sector workers through ERISA-covered retirement plans. 80 FR 71936 (codified at 29 CFR 2509.2015–02). A number of commenters on the NPRM discussed ERISA preemption and other issues that the commenters perceived as raised by the analysis and conclusions in the IB. Comments on the IB are beyond the scope of this regulation and are not discussed in this document.

[16] The Department has issued similar safe harbor regulations for group and group-type insurance arrangements, 29 CFR 2510.3–1(j) and for tax sheltered annuities, 29 CFR 2510.3–2(f).

[17] The term "individual retirement plan" includes both traditional IRAs (individual retirement accounts described in section 408(a) and individual retirement annuities described in section 408(b) of the Code) and Roth IRAs under section 408A of the Code.

[18] *See* Comment Letter # 58 (Joint Submission from Service Employee International Union,

Accordingly, the final rule revises paragraph (a) of § 2510.3–2 by deleting some outdated text and adding the following sentence: "The safe harbors in this section should not be read as implicitly indicating the Department's views on the possible scope of section 3(2)." By adding this sentence to paragraph (a) of § 2510.3–2, the sentence then modifies all plans, funds and programs subsequently listed and discussed in paragraphs (b) through (h) of § 2510.3–2.[19] In different contexts in the past, the Department has stated its view that various of the programs listed in paragraphs (b) through (g) of § 2510.3–2 are safe harbors and do not preclude the possibility that plans, funds, and programs not meeting the relevant conditions in the regulation might also not be pension plans within the meaning of ERISA. Thus, this revision to paragraph (a) merely clarifies this view in operative text for these other programs.

B. Ability To Choose Investments and Control Leakage

The final rule removes the condition from paragraph (h)(1)(vi) of the proposal that would have prohibited states from imposing any restrictions, direct or indirect, on employee withdrawals from their IRAs. The proposal provided that a state program must not "require that an employee or beneficiary retain any portion of contributions or earnings in his or her IRA and does not otherwise impose any restrictions on withdrawals or impose any cost or penalty on transfers or rollovers permitted under the Internal Revenue Code." The purpose of this prohibition, as explained in the proposal's preamble, was to make sure that employees would have meaningful control over the assets in their IRAs.[20]

The first reason commenters gave for removing this condition was that it would interfere with the states' ability to guard against "leakage" (*i.e.,* the use of long-term savings for short-term purposes). Absent such prohibition, states might seek to prevent leakage by, for example, requiring workers to wait until a specified age (*e.g.,* age 55 or 60) before they have access to their money, subject to an exception for "hardship withdrawals." Since the states deal directly with the effects of geriatric poverty, they have a substantial interest in controlling leakage, and the proposal's prohibition against withdrawal restrictions could undermine that interest.[21]

The commenters' second reason for removal was that the proposal's prohibition would interfere with the states' ability to design programs with diversified investment strategies, including investment options where immediate liquidity is not possible, but where participants may see better performance with lower costs. For instance, some state payroll deduction savings programs may wish to use default or alternative investment options that include partially or fully guaranteed returns but do not provide immediate liquidity. In addition, some state payroll deduction savings programs may wish to pool and manage default investments using strategies and investments similar to those for defined benefit plans covering state employees, which typically include lock ups and restrictions ranging from months to years. The commenters assert that these long-term investments tend to provide greater returns than similar investments with complete liquidity (such as daily-valued mutual or bank funds), but would not have been permitted under the proposal's prohibition.

The third reason given by commenters was that the proposal's prohibition would interfere with the states' ability to offer lifetime income options, such as annuities. One consumer organization commented, for instance, that the proposed prohibition "may have the effect of preventing states from requiring an annuity payout (or even permitting an annuity payout option). . . ."[22] Another commenter stated, "as drafted, the withdrawal restriction can be read to apply at the investment-product level, which could impede an arrangement's ability to offer an investment that includes lifetime income features. Absence of immediate liquidity is an actuarially necessary element for many products that guarantee income for life, and there is no policy basis for excluding investment options that incorporate such features."[23]

The fourth reason given for removal was that the proposal's prohibition was not relevant to determining under ERISA section 3(2) whether the state program, including employer behavior thereunder, constitutes "establishment or maintenance" of an employee benefit plan; or the Department's stated goal of crafting conditions that would limit employer involvement.

The Department agrees in many respects with these arguments and has removed this prohibition from the final regulation. Although the Department included this prohibition in the proposal to make sure that employees would have meaningful control over the assets in their IRAs, the Department has concluded that determinations regarding the necessity for such a prohibition are better left to the states. Based on established principles of federalism, it is more appropriately the role of the states, and not the Department, to determine what constitutes meaningful control of IRA assets in this non-ERISA context, subject to any federal law under the Department's jurisdiction—in this case, the prohibited transaction provisions in section 4975 of the Internal Revenue Code (Code)—applicable to IRAs.

C. Ability To Use Tax Incentives or Credits

The final rule modifies the condition in the proposal that would have prohibited employers from receiving more than their actual costs of complying with state payroll deduction savings programs. The proposal provided that employers may not receive any "direct or indirect consideration in the form of cash or otherwise, other than the reimbursement of actual costs of the program to the employer. . . ." The purpose of this provision was to allow employers to recoup actual costs of complying with the state law, but

---

National Education Association, American Federation of Teachers, American Federation of State County and Municipal Employees, and National Conference on Public Employee Retirement Systems) ("Although the preamble to the Proposed Rule clearly states that it is providing an additional 'safe harbor' that defined an arrangement that is not subject to ERISA coverage, that statement does not appear within the body of the regulation itself. It would be helpful to those states that may wish to experiment by adopting programs that are not specifically and clearly covered by the safe harbor but that are consistent with its meaning and intent if the [final rule] were to include such a statement.").

[19] The plans, funds, and programs described in 29 CFR 2510.3–2 are severance pay plans (*see* paragraph (b)), bonus programs (*see* paragraph (c)), 1975 IRA payroll deduction (*see* paragraph (d)), gratuitous payments to pre-ERISA retirees (*see* paragraph (e)), tax sheltered annuities (*see* paragraph (f)), supplemental payment plans (*see* paragraph (g)) and certain state savings programs (*see* new paragraph (h)).

[20] 80 FR 72006, 72010 (Nov. 18, 2015).

[21] *See* Comment Letter # 39 (AARP) ("Increasingly, states are realizing that if retired individuals do not have adequate income, they are likely to be a burden on state resources for housing, food, and medical care. For example, according to a recent Utah study, the total cost to taxpayers for new retirees in that state will top $3.7 billion over the next 15 years.").

[22] Comment Letter # 65 (Pension Rights Center).

[23] Comment Letter # 44 (TIAA–CREF).

nothing in excess of that amount, in order to avoid economic incentives that might effectively discourage sponsorship of ERISA plans in the future.

Several commenters urged the Department to moderate that proposal's prohibition and grant the states more flexibility to determine the most effective ways to compensate employers for their role in the state program. The majority of commenters on this issue indicated that states should be able to reward employer behavior with tax incentives or credits.[24] The states themselves who commented believe it should be within their discretion whether to provide support to employers that participate in the state program, and to determine the type and amount of that support, particularly where participation in the state program is required by the state.[25] Many commenters also pointed out that it would be very difficult if, as the proposal required, the state had to determine actual cost for every individual employer before providing a reimbursement.[26] One commenter, for example, stated "it may be exceedingly difficult if not impossible for states to accurately calculate the 'actual cost' accrued by each participating employer, and it may be impractical for the amount of each tax credit to vary by employer." [27] The commenters generally recommended that the rule clearly establish that states are able to use tax incentives or credits, whether or not such incentives or credits vary in amount by employer or represent actual costs.

The Department does not intend that cost reimbursement be difficult or impractical for states to implement. Accordingly, paragraph (h)(1)(xi) of the final rule does not require employers' actual costs to be calculated. Instead, it provides that the maximum consideration the state may provide to an employer is limited to a reasonable approximation of the employer's costs (or a typical employer's costs) under the program. This would allow the state to provide consideration in a flat amount based on a typical employer's costs or in different amounts based on an estimate of an employer's expenses. This standard accommodates the commenters' request for flexibility and confirms that states may use tax incentives or credits, without regard to whether such incentives or credits equal the actual costs of the program to the employer. In order to remain within the safe harbor under this approach, however, states must ensure that their economic incentives are narrowly tailored to reimbursing employers for their costs under the payroll deduction savings programs. States may not provide rewards for employers that incentivize them to participate in state programs in lieu of establishing employee pension benefit plans.

D. Ability To Focus on Employers That Do Not Offer Savings Arrangements

The final rule modifies paragraph (h)(2)(i) of the proposal, which stated that a state program meeting the regulation's conditions would not fail to qualify for the safe harbor merely because the program is "directed toward those employees who are not already eligible for some other workplace savings arrangement." Even though this refers to a provision (directing the program toward such employees) that is not a requirement or condition of the safe harbor but is only an example of a feature that states may incorporate when designing their automatic IRA programs, some commenters maintained that this language in paragraph (h)(2)(i) could encourage states to focus on whether particular employees of an employer are eligible to participate in a workplace savings arrangement. They maintained that such a focus could be overly burdensome for certain employers because they may have to monitor their obligations on an employee-by-employee basis, with some employees being enrolled in the state program, some in the workplace savings arrangement, and others migrating between the two arrangements. Such burden, they maintained, could also give employers an incentive not to offer a retirement plan for their employees. The Department sees merit in these comments and also understands that the relevant laws enacted thus far by the states have been directed toward those employers that do not offer any workplace savings arrangement, rather than focusing on employees who are not eligible for such programs. Thus, the final rule provides that such a program would not fail to qualify for the safe harbor merely because it is "directed toward those employers that do not offer some other workplace savings arrangement." This language will reduce employer involvement in determining employee eligibility for the state program, and it accurately reflects current state laws.

E. Ability of Governmental Agencies and Instrumentalities To Implement and Administer State Programs

The final rule clarifies the role of governmental agencies and instrumentalities in implementing and administering state programs. Some conditions in the proposal referred to "State" while other conditions referred to "State . . . or . . . governmental agency or instrumentality of the State." This confused some commenters who wondered whether the Department intended to limit who could satisfy particular conditions by use of these different terms. The commenters pointed out that state legislation creating payroll deduction savings programs typically also creates boards to design, implement and administer such programs on a day-to-day basis and grants to these boards administrative rulemaking authority over the program. The commenters requested clarification on whether the state laws establishing the programs would have to specifically address every condition in the safe harbor, or whether such boards would be able to address any condition not expressly addressed in the legislation through their administrative rulemaking authority.

In response to these comments, the final regulation uses the phrase "State (or governmental agency or instrumentality of the State)" throughout to clarify that, so long as the program is specifically established pursuant to state law, a state program is eligible for the safe harbor even if the state law delegates a wide array of implementation and administrative authority (such as authority for rulemaking, contracting with third-party vendors, and investing) to a board, committee, department, authority, State Treasurer, office (such as Office of the Treasurer), or other similar governmental agency or instrumentality of the state. *See, e.g.,* § 2510.3–2(h)(1)(iii), (iv), (vi), (vii), (xi), and (h)(2)(ii). In addition, the phrase "by a State" was removed from paragraph (h)(1)(i) and the word "implement" was added to paragraph (h)(1)(ii) for further clarification. A conforming amendment also was made to paragraph (h)(2)(iii) to reflect the fact that state legislatures may delegate authority to set or change the state program's automatic contribution and escalation rates to a governmental agency or instrumentality of the state as noted above.

---

[24] *See, e.g.,* Comment Letter # 65 (Pension Rights Center).

[25] *See, e.g.,* Comment Letter # 54 (Oregon Retirement Savings Board). *See also* Comment Letter #37 (Maryland Commission on Retirement Security and Savings).

[26] *See, e.g.,* Comment Letter # 63 (Tax Alliance for Economic Mobility).

[27] Comment Letter # 56 (Aspen Institute Financial Security Program).

IV. Comments Not Requiring Changes to Proposal

A. Applicability of Prohibited Transaction Protections—Code § 4975

A number of commenters sought clarification on whether, and to what extent, the protections in the prohibited transaction provisions in section 4975 of the Code would apply to the state programs covered by the safe harbor. These commenters expressed concern regarding a perceived lack of federal consumer protections under the proposed safe harbor for state payroll deduction savings programs, because such safe harbor arrangements would be exempt from ERISA coverage (including all of ERISA's protective conditions).[28]

The safe harbor in the final rule is expressly conditioned on the states' use of IRAs, as defined in section 7701(a)(37) of the Code. 29 CFR 2510.3–2(h)(1). Such IRAs are subject to applicable provisions of the Code, including Code section 4975. Section 4975 of the Code includes prohibited transaction provisions very similar to those in ERISA, which protect participants and beneficiaries in ERISA plans by identifying and disallowing categories of conduct between plans and disqualified persons, as well as conduct involving fiduciary self-dealing. These prohibited transaction provisions are primarily enforced through imposition of excise taxes by the Internal Revenue Service.

Consequently, the final regulation protects employees from an array of transactions involving disqualified persons that could be harmful to employees' savings. For instance, absent an available prohibited transaction exemption,[29] the safe harbor effectively prohibits a sale or exchange, or leasing, of any property between an IRA and a disqualified person; the lending of money or other extension of credit between an IRA and a disqualified person; the furnishing of goods, services, or facilities between an IRA and a disqualified person; a transfer to, or use by or for the benefit of, a disqualified person of the income or assets of an IRA; any act by a disqualified person who is a fiduciary whereby he or she deals with the income or assets of an IRA in his or her own interest or for his or her own account; and any consideration for his or her own personal account by any disqualified person who is a fiduciary from any party dealing with the IRA in connection with a transaction involving the income or assets of the IRA. 26 U.S.C. 4975(c)(1)(A)–(F).

Section 4975 imposes a tax on each prohibited transaction to be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such). 26 U.S.C. 4975(a). The rate of the tax is equal to 15 percent of the amount involved for each prohibited transaction for each year in the taxable period. *Id.* If the transaction is not corrected within the taxable period, the rate of the tax may be equal to 100 percent of the amount involved. 26 U.S.C. 4975(b). The term "disqualified person" includes, among others, a fiduciary and a person providing services to an IRA.

With regard to commenters who asked how the prohibited transaction provisions in section 4975 of the Code would apply to the state programs covered by the safe harbor, the final rule does not adopt any special provisions for, or accord any special treatment or exemptions to, IRAs established and maintained pursuant to state payroll deduction savings programs. The prohibited transaction rules in section 4975 of the Code apply to, and protect, the assets of these IRAs in the same fashion, and to the same extent, that they apply to and protect the assets of any traditional IRA or tax-qualified retirement plan under Code section 401(a). To the extent persons operating and maintaining these programs are fiduciaries within the meaning of Code section 4975(e)(3), or provide services to an IRA, such persons are "disqualified persons" within the meaning of Code section 4975(e)(2)(A) and (B), respectively. Their status under these sections of the Code is controlling for prohibited transaction purposes, not their status or title under state law. Accordingly, section 4975 of the Code prohibits them from, among other things, dealing with assets of IRAs in a manner that benefits themselves or any persons in whom they have an interest that may affect their best judgment as fiduciaries. Thus, persons with authority to manage or administer these programs under state law should exercise caution when carrying out their duties, including for example selecting a program administrator or making investments or selecting an investment manager or managers, to avoid prohibited transactions. Whether any particular transaction would be prohibited is an inherently factual inquiry and would depend on the facts and circumstances of the particular situation.

State programs concerned about prohibited transactions may submit an individual exemption request to the Department. Any such request should be made in accordance with the Department's Prohibited Transaction Exemption Procedures (29 CFR part 2570). The Department may grant an exemption request if it finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries (and/or IRAs and of their owners), and protective of the rights of the participants and beneficiaries of such plans (and/or the owners of such IRAs).

B. Prescribing a Further Connection Between the State, Employers, and Employees

A number of commenters provided comments on whether the safe harbor should require some connection between the employers and employees covered by a state payroll deduction savings program and the state that establishes the program, and if so, what kind of connection. Some commenters favor limiting the safe harbor to state programs that cover only employees who are residents of the state and employed by an employer whose principal place of business also is within that state.[30] These commenters were focused primarily on burdens on small employers, particularly those operating near state lines with employees in multiple jurisdictions. Other commenters reject the idea that the Department's safe harbor should interfere with what is essentially a question of state law and prerogative. These commenters maintain that the extent to which a state can regulate employers is already established under existing legal principles.[31] The Department agrees with the latter commenters. The states are in the best position to determine the appropriate connection between employers and employees covered under the program and the states that establish such programs, and to know the limits on their ability to regulate extraterritorial conduct. Inasmuch as existing legal principles establish the extent to which the states can regulate employers, the final rule simply requires that the program be specifically established pursuant to state law and that the employer's participation be required by state law. 29 CFR 2510.3–2(h)(1)(i) and (ix). These two conditions define and limit the safe harbor to be coextensive with the state's authority to regulate employers.

---

[28] Comment Letter # 29 (Securities Industry Financial Management Association); Comment Letter # 55 (U.S. Chamber of Commerce); Comment Letter # 62 (Investment Company Institute).

[29] *See* Code section 4975(d) (enumerating several statutory prohibited transaction exemptions); Code section 4975(c)(2) (authorizing Secretary of the Treasury to grant exemptions from the prohibited transaction provisions in Code section 4975) and Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 237 (2012) (generally transferring the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975 to the Secretary of Labor).

[30] *See, e.g.,* Comment Letter #16 (Empower Retirement) and Comment Letter #31 (American Benefits Council).

[31] Comment Letter #11 (Connecticut Retirement Security Board) ("[T]he Department need not establish its own limitations, as the United States Constitution already places limits on the ability of states to regulate extraterritorial conduct." Citing *Healy* v. *Beer Inst., Inc.,* 491 U.S. 324, 336 (1989); *Allstate Ins. Co.* v. *Hague,* 449 U.S. 302, 310 (1981)).

C. Assuming Responsibility for the Security of Payroll Deductions

A number of commenters provided comments on paragraph (h)(1)(iii) of the proposal, which in relevant part provides that a state must "assume[] responsibility for the security of payroll deductions . . . ." Many commenters representing states were concerned that this condition might be construed to hold states strictly liable for payroll deductions, even in extreme cases such as, for example, fraud or theft by employers.

This condition does not make states guarantors or hold them strictly liable for any and all employers' failures to transmit payroll deductions. Rather, this condition would be satisfied if the state established and followed a process to ensure that employers transmit payroll deductions safely, appropriately and in a timely fashion.

Nor does this condition contemplate only a single approach to satisfy the safe harbor. For instance, some states have freestanding wage withholding and theft laws, as well as enforcement programs (such as audits) to protect employees from wage theft and similar problems. Such laws and programs ordinarily would satisfy this condition of the safe harbor if they are applicable to the payroll deductions under the state payroll deduction savings program and enforced by state agents. Other states, however, have adopted, or are considering adopting, timing and enforcement provisions specific to their payroll deduction savings programs.[32] In the Department's view, the safe harbor would permit this approach as well.

Some commenters requested that the Department expand paragraph (h)(1)(iii) by adding several conditions to require states to adopt various consumer protections, such as conditions requiring deposits to be made to IRAs within a maximum number of days, civil and criminal penalties for deposit failures, and education programs for employees regarding how to identify employer misuse of payroll deductions. The Department encourages the states to adopt consumer protections along these lines, as necessary or appropriate. The Department declines the commenters' suggestion to make them explicit conditions of the safe harbor, however, as each state is best positioned to calibrate the type of consumer protections needed to secure payroll deductions. Accordingly, the final rule adopts the proposal's provision without change.

D. Requiring Employer's Participation To Be "Required by State Law"

1. In General

A number of commenters raised concerns with paragraph (h)(1)(x) of the proposal, which in relevant part states that the employer's participation in the program must be "required by State law[.]" Several commenters representing states and financial service providers requested that the Department not include this condition in the final rule. These commenters believe the safe harbor should extend to employers that choose whether or not to participate in a state payroll deduction savings program with automatic enrollment, as long as the state—and not the employer—thereafter controls and administers the program. Another commenter asserted that automatic enrollment "goes to whether a plan is 'completely voluntary' or 'voluntary' for an employee and should not be used as a material measure of how limited an employer's involvement is, especially in this case where the employer has no say in whether automatic enrollment is provided for under the state-run arrangement."

It is the Department's view that an employer that voluntarily chooses to automatically enroll its employees in a state payroll deduction savings program has established a pension plan under ERISA and should not be eligible for a safe harbor exclusion from ERISA. ERISA broadly defines "pension plan" to encompass any "plan, fund, or program" that is "established or maintained" by an employer to provide retirement income to its employees. Under ERISA's expansive test, when an employer voluntarily chooses to provide retirement income to its employees through a particular benefit arrangement, it effectively establishes or maintains a plan. This is no less true when the employer chooses to provide the benefits through a voluntary arrangement offered by a state than when it chooses to provide the benefits through the purchase of an insurance policy or some other contractual arrangement. In either case, the employer made a voluntary decision to provide retirement benefits to its employees as part of a particular plan, fund, or program that it chose to the exclusion of other possible benefit arrangements.

In such circumstances, the employer, by choosing to participate in the state program, is effectively making plan design decisions that have direct consequences to its employees. Decisions subsumed in the employer's choice include, for example, the intended benefits, source of funding, funding medium, investment strategy, contribution amounts and limits, procedures to apply for and collect benefits, and form of distribution. By contrast, an employer that is simply complying with a state law requirement is not making any of these decisions and therefore reasonably can be viewed as complying with the safe harbor and not establishing or maintaining a pension plan under section 3(2) of ERISA.[33] The state has required the employer to participate and automatically enroll its employees; the employer neither voluntarily elects to do this nor significantly controls the program. Limited employer involvement in the program is the key to a determination that the employer has not established or maintained an employee pension benefit plan. The employer's participation must be required by state law—if it is voluntary, the safe harbor does not apply.

The 1975 IRA Payroll Deduction Safe Harbor is still available, however, to interested parties who voluntarily choose to facilitate employees' participation in a state program, if the conditions of that safe harbor are met and if permitted under the state payroll deduction savings program. As discussed above, the 1975 IRA Payroll

---

[32] Connecticut Retirement Security Program, P.A. 16–29, §§ 7(e) and 10(b) (2016).

[33] One commenter asserted that the proposal contrasted with the Department's prior positions on ERISA preemption, and cited the Department's amicus brief in *Golden Gate Rest. Ass'n* v. *San Francisco,* 546 F.3d 639 (9th Cir. 2008). Because arrangements that comply with the safe harbor are being determined by regulation not to be ERISA plans, the Department sees its position in the *Golden Gate* case as distinguishable from its position here. The commenter also argued that the Supreme Court opinion in *Fort Halifax Packing Co.* v. *Coyne,* 482 U.S. 1 (1987), where the court found that a state law requiring employers to make severance payments to employees under certain circumstance was not preempted by ERISA because it did not require establishment of an ongoing administrative scheme, was not support for the Department's proposal. Although such an ongoing scheme may be a necessary element of a plan, it is not, as evidenced by the Department's earlier safe harbors, sufficient to establish an employee benefit plan under ERISA where other conditions—such as being established or maintained by an employer or employee organization, or both—are absent.

Deduction Safe Harbor has terms and conditions substantially similar to those in the safe harbor being adopted today, but it does not permit automatic enrollment, even if accompanied by an option to opt out. Thus, if a state payroll deduction savings program permits employees of employers that are not subject to the state's automatic enrollment requirement to affirmatively choose to participate in the program, neither such participation nor the employer's facilitation of that participation would result in the employer having established an ERISA-covered plan, as long as the employer and state program satisfy the conditions in the 1975 IRA Payroll Deduction Safe Harbor.

Some commenters asserted that the Department was arbitrary in interpreting the 1975 safe harbor to prohibit automatic enrollment. However, as discussed at greater length in the NPRM, the Department's interpretation of the "completely voluntary" provision in the safe harbor is a reasonable reading of the safe harbor condition supported by legal authorities interpreting the concept of "completely voluntary" in other contexts. The interpretation of the safe harbor is also consistent with a legitimate policy concern about employers implementing "opt-out" provisions in employer-endorsed IRA arrangements without having to comply with ERISA duties and consumer protection provisions. That concern is not present with respect to state programs that require employers to auto-enroll employees in a state sponsored IRA program.

One commenter asserted that the Department's analysis in the proposal of whether an automatic payroll deduction savings program operated by a state is an ERISA plan conflicts with the analysis in the interpretive bulletin relating to whether a state can sponsor a multiple employer plan. This comment misapprehends the Department's position in this rulemaking. If the state and the employer comply with the safe harbor conditions, the Department's view is that no ERISA plan is established. Although the interpretive bulletin indicates that a state may under some circumstances act for (in the interest of) a group of voluntarily participating employers in establishing an ERISA-covered multiple employer plan, the bulletin does not mean a state would be similarly acting for employers when it requires that they participate in a program requiring the offering of a savings arrangement that is not an ERISA plan.

2. Special Treatment for Reduction in Size of Employer

Several commenters raised the issue whether the final rule could or should address situations in which an employer that was once required to participate in a state program ceases to be subject to the state requirement due to a change in its size. These commenters noted that most state payroll deduction IRA laws contain an exemption for small employers. In California and Connecticut, for instance, employers with fewer than 5 employees are not subject to the state law requirement.[34] In Illinois, the exemption is available to employers with fewer than 25 employees.[35] Thus, as the commenters noted, an employer that is subject to the requirement could subsequently drop below a state's threshold number of employees, and into the exemption, simply by having one employee resign. The commenters asked whether an employer that falls below the minimum number of employees could continue to make payroll deductions for existing employees (or automatically enroll new employees) under the program and still meet the conditions of the Department's safe harbor.

The situation identified by the commenters results from the operation of the particular state law and is properly a matter for the states to address. For example, a state law with the type of small employer exemption discussed above could require that an employer, once subject to the participation requirement, remains subject to it (either permanently or at least for the balance of the year or some other specified period of time), without regard to future fluctuations in workforce size. A state might also require an employer to maintain payroll deductions for employees who were enrolled when the employer was subject to the requirement, but not require the employer to make deductions for new employees until after its work force has regained the minimum number of employees. An employer that ceases to be subject to a state participation requirement, but that continues the payroll deductions or automatically enrolls new employees into the state program, would be acting outside the boundaries of the new safe harbor. However, its continued participation in the program would reflect its voluntary decision to provide retirement benefits pursuant to a particular plan, fund, or program. Accordingly, it would thereby establish or maintain an ERISA-covered plan.

Nevertheless, if the state allows but does not require an exempted small employer to enroll employees in the program, the employer may be able to do so without establishing an ERISA plan if the employer complies with the conditions of the Department's 1975 IRA Payroll Deduction Safe Harbor, which ensure minimal employer involvement in the employees' completely voluntary decision to participate in particular IRAs. To comply with these conditions, the employer would not be able to make payroll deductions for employees without their affirmative consent.

In the event that an employer establishes its own ERISA-covered plan under a state program, that plan would be subject to ERISA's reporting, disclosure, and fiduciary standards. In such circumstances, the employer generally would be considered the "plan sponsor" and "administrator" of its plan, as defined in section 3(16) of ERISA.[36] The Department would not, however, view the establishment of an ERISA plan by an employer participating in the state program as affecting the availability of the safe harbor for other participating employers.

E. Extending the Safe Harbor to Political Subdivisions

A number of commenters urged the Department to expand the safe harbor to cover payroll deduction savings programs established by political subdivisions of states. The proposal was limited to payroll deduction savings programs established by "States." For this purpose, the proposal defined the term "State" by reference to section 3(10) of ERISA. Section 3(10) of ERISA, in relevant part, defines the term "State" as including "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, [and] Wake Island." Thus, the proposed safe harbor was not available to payroll deduction savings programs established by political subdivisions of states, such as cities and counties.

---

[34] Cal. Gov't Code § 100000(d) (2012); Conn. P.A. 16–29, § 1(7) (2016).

[35] 820 Ill. Comp. Stat. 80/5 (2015).

[36] Commenters requested that this regulation provide a method for employers or states that inadvertently take actions causing an arrangement or program to fail to satisfy the safe harbor to cure that failure and qualify for the safe harbor. Commenters also requested that this regulation allow employers to cure ERISA failures that might result from the creation of an ERISA plan. Although these issues are beyond the scope of this regulation, if problems arise relating to these topics for particular state programs, the Department invites states and other interested persons to ask the Department to consider whether some additional guidance or relief would be appropriate.

These commenters argued that the proposal would be of little or no use for employees of employers in political subdivisions in states that choose not to have a state-wide program, even though there is strong interest in a payroll deduction savings program at a political subdivision level, such as New York City, for example.[37] These commenters asked the Department to consider extending the safe harbor in the proposal essentially to large political subdivisions (in terms of population) with authority and capacity to maintain such programs.[38] Others, however, are concerned that such an expansion might lead to overlapping and possibly conflicting requirements on employers, both within and across states.

The Department agrees with commenters that there may be good reasons for expanding the safe harbor, but believes its analysis of the issue would benefit from additional public comments. Accordingly, in the Proposed Rules section of today's **Federal Register**, the Department published a notice of proposed rulemaking seeking to amend paragraph (h) of § 2510.3–2 to cover certain state political subdivision programs that otherwise comply with the conditions in the final rule. The proposal seeks public comment on not only whether, but also how to amend paragraph (h) of § 2510.3–2 to include political subdivisions of states. Commenters are encouraged to focus on how broadly or narrowly an amended safe harbor might define the term "qualified political subdivision" taking into account the impact of such an expansion on employers, employees, political subdivisions, and states themselves.[39]

V. Regulatory Impact Analysis

A. Executive Order 12866 Statement

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as an "economically significant" action); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal requirements, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, it has determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the final rule and the Department provides the following assessment of its benefits and costs.

Several states have adopted or are considering adopting state payroll deduction savings programs to increase access to retirement savings for individuals employed or residing in their jurisdictions. As stated above, this document amends existing Department regulations by adding a new safe harbor describing the circumstances under which such payroll deduction savings programs, including programs featuring automatic enrollment, would not give rise to the establishment or maintenance of ERISA-covered employee pension benefit plans. State payroll deduction savings programs that meet the requirements of the safe harbor would be established by states, and state law would require certain private-sector employers to participate in such programs. By making clear that state payroll deduction savings programs with automatic enrollment that conform to the safe harbor in the final rule do not give rise to the establishment of ERISA-covered plans, the objective of the safe harbor is to reduce the risk of such state programs being preempted if they were challenged.

In analyzing benefits and costs associated with this final rule, the Department focuses on the direct effects, which include both benefits and costs directly attributable to the rule. These benefits and costs are limited, because as stated above, the final rule merely establishes a safe harbor describing the circumstances under which such state payroll deduction savings programs would not give rise to ERISA-covered employee pension benefit plans. It does not require states to take any actions nor employers to provide any retirement savings programs to their employees.

The Department also addresses indirect effects associated with the rule, which include potential benefits and costs directly associated with the scope and provisions of the state laws creating the programs, and include the potential increase in retirement savings and potential cost burden imposed on covered employers to comply with the requirements of the state programs. Indirect effects vary by state depending on the scope and provisions of the state law, and by the degree to which the rule might influence state actions.

1. Direct Benefits

As discussed earlier in this preamble, some state legislatures have passed laws designed to expand workers' access to workplace savings arrangements, including states that have established state payroll deduction savings programs. Through automatic enrollment such programs encourage employees to establish IRAs funded by payroll deductions. As noted, California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines. In addition, some states are looking at ways to encourage employers to provide coverage under state-administered 401(k)-type plans, while others have adopted or are considering approaches that combine several retirement alternatives including IRAs and ERISA-covered plans.

One of the challenges states face in expanding retirement savings opportunities for private-sector employees is uncertainty about ERISA preemption of such efforts. ERISA generally would preempt a state law that required employers to establish or maintain ERISA-covered employee benefit pension plans. The Department therefore believes that states and other stakeholders would benefit from clear guidelines to determine whether state saving initiatives would effectively require employers to create ERISA-covered plans. The final rule would provide a new "safe harbor" from coverage under Title I of ERISA for state savings arrangements that conform to certain requirements. State initiatives within the safe harbor would not result in the establishment of employee benefit plans under ERISA. The Department expects that the final rule would reduce legal costs, including litigation costs, by (1) removing uncertainty about whether such state savings arrangements are covered by Title I of ERISA, and (2) creating efficiencies by eliminating the need for multiple states to incur the same costs to determine their non-plan status.

---

[37] *See, e.g.*, Comment Letter #57 (The Public Advocate for the City of New York) ("The United States Department of Labor's proposed rule reflects the Department's clear understanding of the dire need for policymakers to develop retirement security solutions for millions of Americans. However, we are concerned that by not including cities in its proposed rule, in particular those with populations over a certain size—such as one million residents—the Department could significantly thwart the positive objectives of the proposed rule.").

[38] *See, e.g.*, Comment Letter #36 (AFL–CIO) ("With respect to political subdivisions of a state, we suggest the Department establish minimum eligibility requirements to ensure that the political entity has the administrative capacity and sophistication necessary to administer a retirement savings arrangement, protect the rights of participating workers, and ensure the security of workers' payroll deductions and retirement savings. The Department could use easily measured proxies for administrative capacity and sophistication. For example, total population of a political subdivision as measured by the most recent decennial census or an interim population estimate published by the U.S. Census Bureau would be an appropriate proxy. The eligibility threshold could be set at or near the total population of the smallest of the 50 states, such as 500,000.").

[39] Some commenters asked whether states could join together in multi-state programs. Nothing in the safe harbor precludes states from agreeing to coordinate state programs or to act in unison with respect to a program.

The Department notes that the final rule would not prevent states from identifying and pursuing alternative policies, outside of the safe harbor, that also would not require employers to establish or maintain ERISA-covered plans. Thus, while the final rule would reduce uncertainty about state activity within the safe harbor, it would not impair state activity outside of it.

Some comments expressed concern about whether the safe harbor rule requires employers to participate in states' savings arrangements, and whether it implicitly indicates the Department's views on arrangements that do not fully conform to the conditions of the safe harbor. To address these concerns, the Department added regulatory text in the final rule explicitly recognizing that the regulation is a safe harbor and as such, does not require employers to participate in state payroll deduction savings programs or arrangements nor does it purport to define every possible program that could fall outside of Title I of ERISA.

2. Direct Costs

The final rule does not require any new action by employers or the states. It merely establishes a safe harbor describing certain circumstances under which state-required payroll deduction savings programs would not give rise to an ERISA-covered employee pension benefit plan. States may incur legal costs to analyze the rule and determine whether their laws fall within the final rule's safe harbor. However, the Department expects that these costs will be less than the costs that would be incurred in the absence of the final rule.

3. Uncertainty

The Department is confident that the final safe harbor rule, by clarifying that certain state payroll deduction savings programs do not require employers to establish ERISA-covered plans, will benefit states and many other stakeholders otherwise beset by greater uncertainty. However, the Department is unsure as to the magnitude of these benefits. The magnitude of the final rule's benefits, costs and transfer impacts will depend on the states' independent decisions on whether and how best to take advantage of the safe harbor and on the cost that otherwise would have attached to uncertainty about the legal status of the states' actions. The Department cannot predict what actions states will take, stakeholders' propensity to challenge such actions' legal status, either absent or pursuant to the final rule, or courts' resultant decisions.

4. Indirect Effects of Safe Harbor Rule: Impact of State Initiatives

As discussed above, the impact of state payroll deduction saving programs is directly attributable to the state legislation that creates such programs. As discussed below, however, under certain circumstances, these effects could be indirectly attributable to the final rule. For example, it is conceivable that more states could create payroll deduction savings programs due to the guidelines provided in the final rule and the reduced risk of an ERISA preemption challenge, and therefore, the increased prevalence of such programs would be indirectly attributable to the final rule. If this issue were ultimately resolved in the courts, the courts could make a different preemption decision in the rule's presence than in its absence. Furthermore, even if a potential court decision would be the same with or without the rulemaking, the potential reduction in states' uncertainty-related costs could induce more states to pursue these workplace savings initiatives. An additional possibility is that the rule would not change the prevalence of state payroll deduction savings programs, but would accelerate the implementation of programs that would exist anyway. With any of these possibilities, there would be benefits, costs and transfer impacts that are indirectly attributable to this rule, via the increased or accelerated creation of state programs.

Commenters expressed concern that states will incur substantial costs to implement their payroll deduction savings programs. One state estimates that it will incur $1.2 million in administrative and operating costs during the initial start-up years.[40] To administer its opt-out process, the same state estimates it will incur $465,000 in one-time mailing and form production costs.[41] Another state estimated that it will take several years before its savings arrangement becomes self-sufficient and it would require a subsidy of between $300,000 and $500,000 a year for five to seven years.[42] Commenters also raised concerns about the states' potential fiduciary liability associated with establishing state payroll deduction savings programs.

The Department is aware of these potential costs, and although the commenters raise valid concerns, the costs are not directly attributable to the final rule; they are attributable to the state legislation creating the payroll deduction savings program. In enacting their programs, states are responsible for estimating the associated costs during the legislative process and determining whether the arrangement is self-sustainable and whether the state has sufficient resources to bear the associated costs and financial risk. States can design their programs to address these concerns, and presumably, will enact state payroll deduction legislation only after determining that the benefits of such programs justify their costs.

Employers may incur costs to update their payroll systems to transmit payroll deductions to the state or its agent, develop recordkeeping systems to document their collection and remittance of payments under the program, and provide information to employees regarding the state savings arrangement. As with states' operational and administrative costs, some portion of these employer costs would be indirectly attributable to the rule if more state payroll deduction savings programs are implemented in the rule's presence than would be in its absence. Because the employers' administrative burden to participate in the state program is generally limited to withholding the required contribution from employees' wages, remitting contributions to the state program, and providing information about the program to employees in order to satisfy the safe harbor, most associated costs for employers would be minimal.

---

[40] Department of Finance Bill Analysis, California Department of Finance (May 2, 2012).

[41] *Id.*

[42] Voluntary Employee Accounts Program Study, Maryland Supplemental Requirement Plans (2008).

Although such costs would be limited for employers, several commenters expressed concern that these costs would be incurred disproportionately by small employers and start-up companies, which tend to be least likely to offer pensions. According to one survey submitted with a comment, about 60% of small employers do not use a payroll service.[43] The commenters assert that these small employers may incur additional costs to use external payroll companies to comply with their states' payroll deduction savings programs. However, some small employers may decide to use a payroll service to withhold and remit payroll taxes independent of their state's program requirements. Therefore, the extent to which these costs can be attributable to states' initiatives could be smaller than what commenters estimated. Moreover, most state payroll deduction savings programs exempt the smallest companies,[44] which could mitigate such costs.

Additional cost-related comments addressed penalties that employers are subject to pay if they fail to comply with the requirements of their states' programs.[45] The commenter argued that those penalties would be more detrimental to small employers because profit margins of small employers are often very thin. However, the costs associated with those penalties are due to a failure to comply with state law. In addition, the final rule accommodates commenters and allows states to use tax incentives or credits as long as their economic incentives are narrowly tailored to reimbursing the costs of states' payroll deduction savings programs. If states reimburse employers for costs incurred to comply with their payroll deduction savings programs, the employers' cost burden can be substantially reduced.

While several comments focused on the cost burden imposed on small employers, an organization representing small employers expressed support for state efforts to establish state payroll deduction savings arrangements, because such arrangements provide a convenient and affordable option for small businesses and their employees to save for retirement. This commenter further states that small business owners want to offer the benefit of retirement savings to their employees because it would help them attract and retain talented employees.

The Department believes that well-designed state-level initiatives have the potential to effectively reduce gaps in retirement security. Relevant variables such as pension coverage,[46] labor market conditions,[47] population demographics,[48] and elderly poverty,[49] vary widely across the states, suggesting a potential opportunity for progress at the state level. Many workers throughout these states currently may save less than would be optimal because of (1) behavioral biases (such as myopia or inertia), (2) labor market conditions that prevent them from accessing plans at work, or (3) they work for employers that simply do not offer retirement plans.[50] Some research suggests that automatic contribution policies are effective in increasing retirement savings and wealth in general by overcoming behavioral biases or inertia.[51] Well-designed state initiatives could help many savers who otherwise might not be saving enough or at all to begin to save earlier than they might have otherwise. Such workers will have traded some consumption today for more in retirement, potentially reaping net gains in overall lifetime well-being. Their additional savings may also reduce fiscal pressure on publicly financed retirement programs and other public assistance programs, such as the Supplemental Nutritional Assistance Program, that support low-income Americans, including older Americans.

However, several commenters were skeptical about potential benefits of state payroll deduction savings arrangements. These commenters believe the potential benefits—primarily increases in retirement savings—would be limited because the proposed safe harbor rule does not allow employer contributions to state payroll deduction programs.

The Department believes that well-designed state initiatives can achieve their intended, positive effects of fostering retirement security. However, the initiatives might have some unintended consequences as well. Those workers least equipped to make good retirement savings decisions arguably stand to benefit most from state initiatives, but also arguably could be at greater risk of suffering adverse unintended effects. Workers who would not benefit from increased retirement savings could opt out, but some might fail to do so. Such workers might increase their savings too much, unduly sacrificing current economic needs. Consequently they might be more likely to cash out early and suffer tax losses (unless they receive a non-taxable Roth IRA distribution), and/or to take on more expensive debt to pay necessary bills. Similarly, state initiatives directed at workers who do not currently participate in workplace savings arrangements may be imperfectly targeted to address gaps in retirement security. For example, some college students might be better advised to take less in student loans rather than open an IRA, and some young families might do well to save more first for their children's education and later for their own retirement. This concern was shared by some commenters who stated that workers without retirement plan coverage tend to be younger, lower-income or less attached to the workforce, which implies that these workers are often financially stressed or have other savings goals. These comments imply that the benefits of state payroll deduction savings arrangements could be limited and in some cases potentially harmful for certain workers. The Department notes that the states are responsible for designing effective programs that minimize these types of harm and maximize benefits to participants.

---

[43] National Small Business Association, April 11, 2013, "2013 Small Business Taxation Survey." This survey says 23% of small employers that handle payroll taxes internally have no employee. Therefore, only about 46%, not 60%, of small employers are in fact affected by state initiatives, based on this survey. The survey does not include small employers that use payroll software or on-line payroll programs, which provide a cost effective means for such employers to comply with payroll deduction savings programs.

[44] For example, California Secure Choice would affect employers with 5 or more employees, Illinois Secure Choice would affect employers with 25 or more employees, and Connecticut Retirement Security would affect employers with 5 or more employees. Cal. Gov.t Code § 100000(d) (2012); 820 Ill. Comp. Stat. 80/5 (2015); Conn. P.A. 16–29 § 1(7) (2016).

[45] For example, according to a comment letter, the Illinois Secure Choice Savings Program allows for a penalty for noncompliance in the first year of $250 per employee per year, which then increases to $500 for noncompliance per employee for each subsequent year.

[46] *See, e.g.,*, Craig Copeland, "Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013," Employee Benefit Research Institute, Issue Brief No. 405 (October 2014) (available at *www.ebri.org*). *See also* a report from the Pew Charitable Trusts, "How States Are Working to Address The Retirement Savings Challenge," (June 2016).

[47] *See, e.g.,* U.S. Bureau of Labor Statistics, "Regional and State Employment and Unemployment—JUNE 2015," USDL–15–1430 (July 21, 2015).

[48] *See, e.g.,* Lindsay M. Howden and Julie A. Meyer, "Age and Sex Composition: 2010," U.S. Bureau of the Census, 2010 Census Briefs C2010BR–03 (May 2011).

[49] Constantijn W. A. Panis & Michael Brien, "Target Populations of State-Level Automatic IRA Initiatives," (August 28, 2015).

[50] According to National Compensation Survey, March 2015, about 69% of private-sector workers have access to retirement benefits—including Defined Benefit and Defined Contribution plans—at work.

[51] *See* Chetty, Friedman, Leth-Petresen, Nielsen & Olsen, "Active vs. Passive Decisions and Crowd-out in Retirement Savings Accounts: Evidence from Denmark," 129 Quarterly Journal of Economics 1141–1219 (2014); *See also* Madrian and Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," 116 Quarterly Journal of Economics 1149–1187 (2001).

Some commenters also raised the concern that state initiatives may "crowd-out" ERISA-covered plans. According to one comment, the proposed rule could inadvertently encourage large employers operating in multiple states to switch from ERISA-covered plans to state-run arrangements in order to reduce costs, especially if they are required to cover employees currently ineligible to participate in ERISA-covered plans under state-run arrangements. Some commenters were concerned about employers' burden to monitor their obligations under the state laws particularly when employers operate in multiple states. These commenters raised the possibility that large employers would incur substantial costs to monitor the participation status of ineligible workers, such as part-time or seasonal workers. The final rule clarifies that state payroll deduction savings programs directed toward employers that do not offer other retirement plans fall within this safe harbor rule. However, employers that wish to provide retirement benefits are likely to find that ERISA-covered programs, such as 401(k) plans, have advantages for them and their employees over participation in state programs. Potential advantages include significantly greater tax preferences, greater flexibility in plan selection and design, opportunity for employers to contribute, ERISA protections, and larger positive recruitment and retention effects. Therefore it seems unlikely that state initiatives will "crowd-out" many ERISA-covered plans, although, if they do, some workers might lose ERISA-protected benefits that could have been more generous and more secure than state-based (IRA) benefits if states do not adopt consumer protections similar to those Congress provided under ERISA.

There is also the possibility that some workers who would otherwise have saved more might reduce their savings to the low, default levels associated with some state programs. States can address this concern by incorporating into their programs participant education or "auto-escalation" features that increase default contribution rates over time and/or as pay increases.

Some commenters were concerned that state payroll deduction savings arrangements would in general provide participants with less consumer protection than ERISA-covered plans. Another commenter pointed out that one particular state's payroll deduction savings program would require employees to pay higher fees than those charged to private plans.[52] However, a careful review of the report cited in this comment suggests that fees set by this particular state's arrangement are not inconsistent with the average fees in the mutual fund industry.[53] Moreover, the Department reiterates that states enacting savings arrangements can take actions to augment consumer protections.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department solicited comments regarding its determination that the proposed rule is not subject to the requirements of the PRA, because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3). The Department's conclusion was based on the premise that the proposed rule did not require any action by or impose any requirements on employers or states. It merely clarified that certain state payroll deduction savings programs that encourage retirement savings would not result in the creation of ERISA-covered employee benefit plans if the conditions of the safe harbor were met.

The Department did not receive any comments regarding this assessment. Therefore, the Department has determined that the final rule is not subject to the PRA, because it does not contain a collection of information. The PRA definition of "burden" excludes time, effort, and financial resources necessary to comply with a collection of information that would be incurred by respondents in the normal course of their activities. *See* 5 CFR 1320.3(b)(2). The definition of "burden" also excludes burdens imposed by a state, local, or tribal government independent of a Federal requirement. *See* 5 CFR 1320.3(b)(3). The final rule imposes no burden on employers because states customarily include notice and recordkeeping requirements when enacting their payroll deduction savings programs. Thus, employers participating in such programs are responding to state, not Federal, requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

Although several commenters maintained that the proposed rule would impose significant costs on small employers, similar to the proposal, the final rule merely establishes a new safe harbor describing circumstances in which state payroll deduction savings programs would not give rise to ERISA-covered employee pension benefit plans. Therefore, the final rule imposes no requirements or costs on small employers, and the Department believes that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to section 605(b) of the RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private-sector, which may impose an annual burden of $100 million.

E. Congressional Review Act

The final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

---

[52] According to a comment letter, Illinois' Secure Choice Savings Program stated that the costs of fees paid by employees will be charged up to 0.75 percent of the overall balances, which is higher than those charged to 401(k) plan participants who invested in equity mutual funds (0.58 percent).

[53] According to the ICI Research Perspective, "The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2014," the mutual fund industry average expense ratio was 0.74 percent in 2013 and in 0.70 percent in 2014, which are in the comparable range to the Illinois Secure Choice Savings Program's ceiling in fees, 0.75 percent.

F. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. It also requires adherence to specific criteria and requirements, such as consultation with state and local officials, in the case of policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government."

The final rule describes circumstances under which a state payroll deduction savings program would not constitute the establishment or maintenance of an ERISA-covered plan by specified actors. Such guidance may therefore be helpful to states that have taken or might take action, but the safe harbor does not limit the actions that states could take. The safe harbor does not require states to do anything or preempt state law. Nor does it act directly on a state, or cause any state to do anything the state had not already decided or is inclined to do on its own. For example, as described elsewhere in this final rule, a state program that fell outside the terms of the safe harbor would not necessarily result in the creation of ERISA plans. The regulation itself is devoid of consequences to the state or states that decide not to follow its terms. In other words, the regulation may indirectly influence how states design their payroll deduction savings programs, but its existence is unlikely to be dispositive on whether states adopt programs in the first instance, as evidenced by some states that already enacted legislation. Therefore, the final rule does not contain polices with federalism implications within the meaning of the Order.

Nonetheless, in respect for the fundamental federalism principles set forth in the Order, the Department affirmatively engaged in outreach with officials of states, and with employers and other stakeholders, regarding the proposed rule and sought their input on any federalism implications that they believe may be presented by the safe harbor. Departmental staff engaged in numerous meetings, conference calls, and outreach events with interested stakeholders on the proposed rule and on various state legislative proposals. The Department also received numerous comment letters from states and local governments and their representatives. Many of the changes in the final rule stem from suggestions contained in these comment letters. Indeed, the notice of proposed rulemaking on political subdivisions discussed earlier in this preamble also stems from comments and concerns raised by state or local governments.

List of Subjects in 29 CFR Part 2510

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting, Coverage.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2510 as set forth below:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 237 (2012), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

■ 2. In § 2510.3–2, revise paragraph (a) and add paragraph (h) to read as follows:

§ 2510.3–2 Employee pension benefit plans.

(a) *General.* This section clarifies the terms "employee pension benefit plan" and "pension plan" for purposes of title I of the Act and this chapter by setting forth safe harbors under which certain specific plans, funds and programs would not constitute employee pension benefit plans when the conditions of this section are satisfied. The safe harbors in this section should not be read as implicitly indicating the Department's views on the possible scope of section 3(2). To the extent that these plans, funds and programs constitute employee welfare benefit plans within the meaning of section 3(1) of the Act and § 2510.3–1 of this part, they will be covered under title I; however, they will not be subject to parts 2 and 3 of title I of the Act.

* * * * *

(h) *Certain State savings programs.* (1) For purposes of title I of the Act and this chapter, the terms "employee pension benefit plan" and "pension plan" shall not include an individual retirement plan (as defined in 26 U.S.C. 7701(a)(37)) established and maintained pursuant to a State payroll deduction savings program, provided that:

(i) The program is specifically established pursuant to State law;

(ii) The program is implemented and administered by the State establishing the program (or by a governmental agency or instrumentality of the State), which is responsible for investing the employee savings or for selecting investment alternatives for employees to choose;

(iii) The State (or governmental agency or instrumentality of the State) assumes responsibility for the security of payroll deductions and employee savings;

(iv) The State (or governmental agency or instrumentality of the State) adopts measures to ensure that employees are notified of their rights under the program, and creates a mechanism for enforcement of those rights;

(v) Participation in the program is voluntary for employees;

(vi) All rights of the employee, former employee, or beneficiary under the program are enforceable only by the employee, former employee, or beneficiary, an authorized representative of such a person, or by the State (or governmental agency or instrumentality of the State);

(vii) The involvement of the employer is limited to the following:

(A) Collecting employee contributions through payroll deductions and remitting them to the program;

(B) Providing notice to the employees and maintaining records regarding the employer's collection and remittance of payments under the program;

(C) Providing information to the State (or governmental agency or instrumentality of the State) necessary to facilitate the operation of the program; and

(D) Distributing program information to employees from the State (or governmental agency or instrumentality of the State) and permitting the State (or governmental agency or instrumentality of the State) to publicize the program to employees;

(viii) The employer contributes no funds to the program and provides no bonus or other monetary incentive to employees to participate in the program;

(ix) The employer's participation in the program is required by State law;

(x) The employer has no discretionary authority, control, or responsibility under the program; and

(xi) The employer receives no direct or indirect consideration in the form of cash or otherwise, other than consideration (including tax incentives and credits) received directly from the State (or governmental agency or instrumentality of the State) that does not exceed an amount that reasonably approximates the employer's (or a typical employer's) costs under the program.

(2) A State savings program will not fail to satisfy the provisions of paragraph (h)(1) of this section merely because the program—

(i) Is directed toward those employers that do not offer some other workplace savings arrangement;

(ii) Utilizes one or more service or investment providers to operate and administer the program, provided that the State (or governmental agency or instrumentality of the State) retains full responsibility for the operation and administration of the program; or

(iii) Treats employees as having automatically elected payroll deductions in an amount or percentage of compensation, including any automatic increases in such amount or percentage, unless the employee specifically elects not to have such deductions made (or specifically elects to have the deductions made in a different amount or percentage of compensation allowed by the program), provided that the employee is given adequate advance notice of the right to make such elections and provided, further, that a program may also satisfy this paragraph (h) without requiring or otherwise providing for automatic elections such as those described in this paragraph (h)(2)(iii).

(3) For purposes of this section, the term State shall have the same meaning as defined in section 3(10) of the Act.

Signed at Washington, DC, this 24th day of August, 2016.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–20639 Filed 8–25–16; 4:15 pm]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0012]

RIN 1625–AA08

Special Local Regulation; Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals, on September 10 and September 11, 2016. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from September 10, 2016 through September 11, 2016. The rule will be enforced from 1 p.m. to 7 p.m. each day it is effective.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0012 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 27, 2015, the Bucksport Marina notified the Coast Guard that it will sponsor a series of drag boat races from 1 p.m. to 7 p.m. on September 10, 2016 and September 11, 2016. In response, on July 10, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC, 81 FR 44815. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended August 10, 2016, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable due to the date of the event. The Coast Guard did not receive any adverse comments during the period outlined in the NPRM with regard to this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Bucksport/Lake Murray Drag Boat Fall Nationals, a series of high speed boat races.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 10, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes a special local regulation on the Atlantic Intracoastal Waterway in Busksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals on September 10 and September 11, 2016. The special local regulation will be enforced daily from 1 p.m. until 7 p.m. on September 10 and September 11, 2016. Approximately 50 powerboats are expected to participate in the races and approximately 35 spectator vessels are expected to attend the event.

Except for those persons and vessels participating in the drag boat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation would be enforced for only six hours a day over a two-day period; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons discussed in Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction.

An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0012 to read as follows:

§ 100.35T07–0012 Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC.

(a) *Regulated Area.* All waters of the Atlantic Intracoastal Waterway encompassed by a line connecting the following points: point 1 in position 33°39′13″ N., 079°05′36″ W.; thence west to point 2 in position 33°39′17″ N., 079°05′46″ W.; thence south to point 3 in position 33°38′53″ N., 079°05′39″ W.; thence east to point 4 in position 33°38′54″ N., 079°05′31″ W.; thence north back to point 1. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in Bucksport/Lake Murray Drag Boat Fall Nationals or serving as safety vessels. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced daily from 1 p.m. until 7 p.m. on September 10 and September 11, 2016.

Dated: August 23, 2016.

B.D. Falk,

Commander, U.S. Coast Guard. Acting Captain of the Port Charleston.

[FR Doc. 2016–20716 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0754]

Safety Zone; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce regulations for a safety zone for an annual fireworks event in the Captain of the Port Delaware Bay zone from 8 p.m. to 10 p.m. on September 16, 2016, with a rain date of September 18, 2016. Enforcement of this zone is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the enforcement periods, no vessel may transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.506 will be enforced from 8 p.m. through 10 p.m. on September 16, 2016, with a rain date of September 18, 2016, for the safety zone identified in row (a)(16) of Table to § 165.506.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email MST1 Thomas Simkins, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, email *Tom.J.Simkins@uscg.mil.*

SUPPLEMENTARY INFORMATION: From 8 p.m. to 10 p.m. on September 16, 2016, with a rain date of September 18, 2016, the Coast Guard will enforce regulations in 33 CFR 165.506 for the safety zone in the Delaware River in Philadelphia, PA listed in row (a)(16) in the table in that section. This action is being taken to provide for the safety of life on navigable waterways during the fireworks display.

Our regulations for recurring firework events in Captain of the Port Delaware Bay Zone, appear in § 165.506, Safety Zones; Fireworks Displays in the Fifth Coast Guard District, which specifies the location of the regulated area for this safety zone as all waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W.; thence to latitude 39°56′29″.1 N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge.

As specified in § 165.506, during the enforcement period no vessel may transit this safety zone without approval from the Captain of the Port Delaware Bay (COTP). If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.506 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of this enforcement period via Broadcast Notice to Mariners (BNM). If the COTP Delaware Bay determines that the regulated area need not be enforced for the full duration, a BNM to grant general permission to enter the safety zone may be used.

Dated: August 24, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2016–20774 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0371]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters east of Ft. Monroe located in Hampton, VA, on the Chesapeake Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with military exercises involving high-speed, quick maneuvering vessels. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Hampton Roads.

DATES: This rule is effective from 7 a.m. on September 7, 2016, through 6 p.m. on October 7, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0371 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *hamptonroadswaterway@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because information about the military exercises beginning on September 7, 2016, was not received by the Coast Guard with sufficient time making it impracticable to publish a final rule less than 30 days after the publication in the **Federal Register** while also allowing for an opportunity to comment on a proposed rule. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts and local notice to mariners.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. The restriction on vessel traffic is necessary to protect life, property and the environment, for the duration of the military exercise due to the high speeds of the vessels involved. Therefore, due to the need to have a rule effective by September 7, 2016, a 30-day, delayed-effective-date is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives, immediate action is needed to protect persons and vessels, and enhance public and maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Hampton Roads (COTP) has determined that potential hazards associated with the military exercises starting on September 7, 2016, will be a safety concern for anyone within described coordinates of the U.S. Navy exercises. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from hazards to mariners associated with the exercises include high speed maneuvering vessels.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. Wednesday, September 7, 2016, through 6 p.m. Friday, October 7, 2016. The safety zone will encompass all navigable waters within an area enclosed by a line connecting the following points latitude 37°07′06″ N., longitude 076°13′12″ W., thence east to 37°05′18″ N., longitude 076°06′54″ W., thence southeast to 37°04′30″ N., longitude 076°06′30″ W., thence south to 36°59′24″.4 N., longitude 076°08′30″ W., thence west to 37°01′18″ N., longitude 076°15′36″ W., thence to the point or origin on the Chesapeake Bay located just northeast of Ft. Monroe in Hampton, VA. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during military exercises. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact the designated area of the Chesapeake Bay in Hampton, VA for 31 days. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 31 days that will prohibit entry within five nautical miles of vessels involved in the military exercises located just northeast of Ft. Monroe in Hampton, VA. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0371 to read as follows:

§ 165.T05–0371 Safety Zone, Chesapeake Bay; Hampton, VA.

(a) *Definitions.* For the purposes of this section—

Captain of the Port means the Commander, Sector Hampton Roads.

"Representative" means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

Participants means individuals and vessels involved in the military exercises.

(b) *Location.* The following area is a safety zone: All waters in the vicinity of Ft. Monroe, on the Chesapeake Bay, bound by a line drawn from latitude 37°07′06″ N., longitude 076°13′12″ W., thence east to 37°05′18″ N., longitude 076°06′54″ W., thence southeast to 37°04′30″ N., longitude 076°06′30″ W., thence south to 36°59′24″.4 N., longitude 076°08′30″ W., thence west to 37°01′18″ N., longitude 076°15′36″ W., thence to the point or origin. (NAD 1983).

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (b) of this section.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels within this safety zone when this section becomes effective must depart the zone immediately.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number 757–668–5555.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(6) This section applies to all persons or vessels except participants and vessels that are engaged in the following operations: enforcing laws; servicing aids to navigation, and emergency response vessels.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. on September 7, 2016, through 6 p.m. on October 7, 2016.

Dated: July 28, 2016.

Richard J. Wester,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–20855 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0824]

RIN 1625–AA00

Safety Zone; Dredging, Shark River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on a portion of Shark River, in Neptune City, NJ, from September 1, 2016, through September 30, 2016, while dredging operations are being conducted in the main navigational channel. This safety zone is necessary to provide for the safety of life on navigable waters during dredging operations and will restrict vessel traffic from transiting the main navigational channel.

DATES: This rule is effective from September 1, 2016, through September 30, 2016. During this period, it will only be enforced during the following weekly hours, from 9 a.m. on Mondays through 9 p.m. on Thursdays, with the exception of Labor Day weekend, 6 a.m. Friday September 2, 2016 through 12 p.m. Tuesday September 6, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to, type USCG–2016–0824 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215) 271–4889, email *Tom.J.Simkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

II. Background Information and Regulatory History

Efforts to dredge the Shark River have been underway for well over a decade. After Superstorm Sandy the need to dredge the river increased significantly due to sediment deposited by the storm, which impeded navigation within those channels. Funding issues and concerns over dewatering locations (locations to dry the dredged materials) have historically stalled the progress of this project.

Mobile Dredging and Pumping Co. has been awarded the contract to restore the state channels to allow safe passage for recreational and commercial traffic. The project requires dredging approximately 102,000 cubic yards of sediment comprised of sand and silt. The sediment will be hydraulically dredged and piped via a secure welded pipeline to the selected dewatering locations.

The purpose of this rule is to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations. The rule will temporarily restrict vessel traffic from transiting a portion of the Shark River while dredging operations are being conducted in the main navigational channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event were not received by the Coast Guard until August 17, 2016, and the dredging operation will begin September 1, 2016. The safety zone is needed by September 1, 2016, to ensure safe navigation of the vessels transiting the Shark River, and it is impracticable to publish an NPRM and consider comments before that date. The dredge and dredge piping must be positioned in the main navigational channel in order for the dredging company to complete the proper dredging of the main navigational channel. Allowing this event to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with dredge piping and dredge operations. Therefore, it is imperative that there is a safety zone restricting traffic in this portion of the Shark River, in Neptune City, NJ.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the reasons we stated for not publishing an NPRM. The Coast Guard expects that there will be an impact to vessel traffic during times when the navigational channel is restricted. However, there will be times throughout the project where vessel traffic is not restricted and traffic will be able to freely flow through the main navigational channel. Furthermore, notification of the waterway restrictions will be made by the contractor, Mobile Dredging and Pumping Co. Additionally the New Jersey Department of Transportation, Office of Marine Resources, will be conducting outreach to the local community. Notification of the safety zone and waterway restrictions will be made by the COTP via marine safety broadcast using VHF–FM channel 16 and through the Local Notice to Mariners.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port, Delaware Bay has determined that potential hazards are associated with dredge piping and dredge operations from September 1, 2016, through September 30, 2016. The rule is necessary to promote maritime safety and protect vessels from the hazards of dredge piping and dredge operations.

The rule will have an impact to vessels transiting through the Shark River main navigational channel, from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W. channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W. as vessels will be unable to transit the main navigational channel during times when dredging operations are being conducted. This restriction is necessary to ensure the safety of life and protect vessel from dredge piping and dredge operations.

IV. Discussion of the Rule

On September 1, 2016, dredging will begin on a portion of the Shark River in Neptune City, NJ. The Captain of the Port, Delaware Bay, has determined that the hazards associated with dredge piping and dredge operations in the main navigational channel create the need for a safety zone to ensure safety of vessels transiting this portion and for workers engaged in dredge piping and dredging operations of the Shark River.

The safety zone will close the main navigational channel on all the navigable waters on the Shark River from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W.; during times of dredging. Dredging for the main navigational channel is scheduled from September 1, 2016, through September 30, 2016, only from 9 a.m. on Mondays through 9 p.m. on Thursdays, with the exception of Labor Day weekend, 6 a.m. Friday September 2, 2016 through 12 p.m. Tuesday September 6, 2016. Entry into, transiting, or anchoring within this portion of Shark River during these times is prohibited. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

The channel will be open from September 1, 2016, through September 30, 2016, from 9 p.m. on Thursdays to 9 a.m. on Mondays, as well as Labor Day weekend, 6 a.m. Friday September 2, 2016 through 12 p.m. Tuesday September 6, 2016. Vessels may transit freely during these times, and vessels are requested to contact the dredge via VHF–FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This finding is based on the limited size of the zone and duration of the safety zone. Although the main navigational channel of this portion of the Shark River will be closed for periods of time throughout the dredging operation, there are designated times where the channel will be open for vessel traffic and traffic will be able to flow freely. Vessels will only be affected 84-hours weekly, from 9 a.m. on Mondays through 9 p.m. on Thursdays, during the month of September in 2016. The safety zone and channel closure will be well publicized to allow mariners to make alternative plans for transiting the affected area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

It is expected that there will be some disruption to the maritime community. Before the effective period, the Coast Guard, Mobile Dredging and Pumping Co., and New Jersey Department of Transportation's Office of Marine Resources will issue maritime advisories, widely available to users of the Shark River, describing times and dates of waterway closures and openings.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing all the waters from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W., in the Shark River, in Neptune City, NJ. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0824 to read as follows:

§ 165.T05–0824 Safety Zone, Dredging; Shark River, NJ.

(a) *Regulated areas.* The following areas are safety zone: All waters from latitude 40°10′53.2579″ N., longitude 074°01′52.6231″ W., bounded by the eastern side of the channel and the western side of the channel, north, to latitude 40°11′21.0139″ N., longitude 074°01′53.1749″ W., in the Shark River, in Neptune City, NJ. These coordinates are based on the World Geodetic System 1984 (WGS 84) horizontal datum reference.

(b) *Regulations.* The general safety zone regulations in § 165.23 apply to the safety zone created by this section.

(1) All vessels and persons are prohibited from entering into or moving within the safety zone described in paragraph (a) of this section while it is subject to enforcement, unless authorized by the Captain of the Port, Delaware Bay, or by his designated representative.

(2) Persons or vessels seeking to enter or pass through the safety zone must contact the Captain of the Port, Delaware Bay, or his designated representative to seek permission to transit the area. The Captain of the Port, Delaware Bay can be contacted at telephone number 215–271–4807 or on Marine Band Radio VHF Channel 16 (156.8 MHz).

(3) Vessels may freely transit this portion of the Shark River from September 1, 2016, through September 30, 2016, weekly, from 9 p.m. on Thursdays through 9 a.m. on Mondays, as well as Labor Day weekend, 6 a.m. Friday September 2, 2016 through 12 p.m. Tuesday September 6, 2016. Vessels are requested to contact the dredge via VHF–FM channel 13 or 16 to make satisfactory passing arrangement and maintain a safe speed when transiting the main navigational channel during times of channel openings.

(4) This section applies to all vessels except those engaged in the following operations: enforcing laws, servicing aids to navigation and emergency response vessels.

(c) *Definitions.* As used in this section:

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement periods.* This section will be enforced weekly, from 9 a.m. on Mondays through 9 p.m. on Thursdays, from September 1, 2016, through September 30, 2016, with the exception of Labor Day weekend, 6 a.m. Friday September 2, 2016 through 12 p.m. Tuesday September 6, 2016, unless cancelled earlier by the Captain of the Port.

Dated: August 25, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2016–20820 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0832]

RIN 1625–AA00

Safety Zone; Caribbean Fantasy, Vessel on Fire; Punta Salinas, Toa Baja, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone of 1,000 yards radius for the Cruise Ship Caribbean Fantasy due to an imminent fire on board, in the vicinity of Punta Salinas, Toa Baja, Puerto Rico. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the fire on board the vessel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Juan.

DATES: This rule is effective without actual notice from August 30, 2016 until 11:59 p.m. on August 31, 2016. For purposes of enforcement, actual notice will be used from 3 p.m. on August 17, 2016 through August 30, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0832 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Efrain Lopez, Sector San Juan

Prevention Department, Coast Guard; telephone (787) 289–2097, email *Efrain.Lopez1@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because of the immediate actions needed to respond to the emergency and potential safety hazards associated with the fire on board the Caribbean Fantasy. It is impracticable to publish an NPRM because we must establish this safety zone immediately, on August 17, 2016.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the emergency and potential safety hazards associated with the fire on board the Caribbean Fantasy.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with fire will be a safety concern for anyone within a 1000-yard radius the Caribbean Fantasy. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

This rule establishes a safety zone from 3 p.m. on August 17, 2016 until 11:59 p.m. on August 31, 2016. The safety zone will cover all navigable waters within 1000 yards of the vessel Caribbean Fantasy. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the passenger gets rescued and the fire gets suppressed. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The safety zone listed in this rule will restrict vessel traffic from entering, transiting in or operating on the waters within this zone. The effect of this regulation will not be significant for several reasons: (1) this rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through Broadcast Notice to Mariners via VHF–FM marine channel 16 and on-scene representatives. These notifications will allow the public to plan operations around the affected areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 1000 yards of the Caribbean Fantasy due to an imminent fire on board. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0832 to read as follows:

§ 165.T07–0832 Safety Zone; Caribbean Fantasy, Vessel on Fire; Punta Salinas, Toa Baja, Puerto Rico.

(a) *Regulated area.* The following area is a safety zone: all waters within 1,000 yard radius from the Caribbean Fantasy, located in Punta Salinas, Toa Baja, Puerto Rico.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this safety zone is prohibited unless specifically authorized by the Captain of the Port San Juan or a designated representative.

(2) Persons or vessels desiring enter into, pass through, or operate on the waters within this zone, must request permission from the Captain of the Port San Juan or a designated representative. They may be contacted on VHF–FM Channel 16 or by telephone at (787) 289–2041.

(3) If permission is granted, all persons and vessels shall comply with any specific instructions of the Captain of the Port San Juan or designated representative, while transiting through the zone.

(d) *Informational broadcasts.* The Coast Guard will provide notice of the regulated area by Broadcast Notices to Mariners and on-scene designated representatives.

(e) *Enforcement period.* This safety zone will be enforced from 3 p.m. on August 17, 2016 through 11:59 p.m. on August 31, 2016.

Dated: August 17, 2016.

R.W. Warren,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2016–20856 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0054; FRL–9951–22–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Emissions From Various Processes and Fuel-Burning Equipment From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting conditional approval of a state implementation plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). The revisions adds and amends regulations in the SIP which control emissions from various processes and fuel-burning equipment at Kraft pulp mills. The SIP revision includes the following: a new definition for "NO$_X$ Ozone Season Allowance;" a new regulation with nitrogen oxides (NO$_X$) limits for fuel-burning equipment located at Kraft pulp mills; a removal and relocation of existing NO$_X$ reasonably available control technology (RACT) requirements for Kraft pulp mills into another Maryland regulation; and a revised regulation which clarifies the volatile organic compound (VOC) control system and emission requirements for several process installations at Kraft pulp mills. EPA is granting conditional approval because the new Maryland definition references the defunct Clean Air Interstate Rule (CAIR) and because MDE provided a commitment to remove all references to CAIR within the definition of "NO$_X$ Ozone Season Allowance" and submit a revised definition as a new SIP revision, no later than a year from EPA finalizing this conditional approval. Upon timely meeting of this commitment, EPA will propose to convert the conditional approval of the SIP revision to a final, full approval. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on September 29, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R03–OAR–2016–0054. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814 2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 2016 (81 FR 31887), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed to grant conditional approval of revisions to regulations in Maryland's SIP which control emissions from various processes and fuel-burning equipment at Kraft pulp mills. The formal SIP revision (14–04) was submitted by MDE on October 15, 2014.

II. Summary of SIP Revision

MDE's SIP revision adds and amends regulations in order to control emissions from various processes and fuel-burning equipment at Kraft pulp mills. The SIP revision adds a definition for "NO_X Ozone Season Allowance" and establishes applicability, compliance requirements, monitoring and reporting requirements, allowances, and NO_X emission standards and limits for Kraft pulp mills. The SIP revision also removes subsection (C)(h) of the Code of Maryland Regulations (COMAR) 26.11.09.08 from the Maryland SIP because the NO_X requirements for pulp mills have been relocated to COMAR 26.11.14.07. The SIP revision clarifies the VOC control system and requirements for several process installations at Kraft pulp mills.

Other specific requirements of the SIP revision and the rationale for EPA's action to grant conditional approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is granting conditional approval of Maryland's October 15, 2014 SIP revision concerning the regulations and requirements to control NO_X and VOC emissions from various processes and fuel-burning equipment at Kraft pulp mills as it strengthens the SIP with provisions related to controlling emissions of NO_X and VOC. The conditional approval is contingent upon MDE's September 29, 2015 commitment to remove references to the now defunct CAIR CAA allowance trading program within the definition of "NO_X Ozone Season Allowance," at COMAR 26.11.01.01 and replace with another allowance mechanism. Once EPA has determined that MDE has satisfied this condition and EPA approves the revised definition, EPA shall remove the conditional nature of its approval and this SIP revision will at that time receive full approval status.

IV. Incorporation by Reference

In this rule, with our conditional approval, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing, with our conditional approval, the incorporation by reference of revisions to COMAR 26.11.01.01, COMAR 26.11.14.07, COMAR 26.11.09.08, and COMAR 26.11.14.06. Therefore, these materials have been conditionally approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

---

[1] 62 FR 27968 (May 22, 1997).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 31, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the regulations and requirements for the control of emissions from various processes and fuel-burning equipment from Kraft pulp mills, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. In § 52.1070, paragraph (c) table is amended by revising the entries for "26.11.01.01", "26.11.09.08", "26.11.14.06", and adding in numerical order the entry for "26.11.14.07"to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA Approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01 General Administrative Provisions				
26.11.01.01	Definitions	03/03/14	08/30/16	Revised definition of "NO_X Ozone Season Allowance" and Conditional Approval of definition of "NO_X Ozone Season Allowance".
*	*	*	*	*
26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations				
*	*	*	*	*
26.11.09.08	Control of NO_X Emissions for Major Stationary Sources.	03/03/14	08/30/16 [*Insert* ***Federal Register*** *citation*].	Removed and relocated existing NO_X RACT requirements under COMAR 26.11.14.07. Conditional Approval.
*	*	*	*	*
26.11.14 Control of Emissions From Kraft Pulp Mills				
*	*	*	*	*
26.11.14.06.	Control of Volatile Organic Compounds.	03/03/14	08/30/16 [*Insert* ***Federal Register*** *citation*].	Amended to clarify volatile organic compound (VOC) control system and requirements at Kraft pulp mills. Conditional Approval.
26.11.14.07.	Control of NO_X Emissions from Fuel Burning Equipment.	03/03/14	08/30/16 [*Insert* ***Federal Register*** *citation*].	Regulation Added. Conditional Approval.
*	*	*	*	*

* * * * *

[FR Doc. 2016–20654 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0675; FRL–9951–59–Region 4]

Air Plan Approval; Kentucky; Source Specific Revision for Louisville Gas and Electric

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through its Energy and Environment Cabinet, Department of Environmental Protection, Division for Air Quality (KY DAQ) on February 13, 2013, for the purpose of establishing emission requirements for the changeover from coal-fired units U4, U5

and U6 to a new natural gas-fired combined cycle (NGCC) generating unit U15 and auxiliary boiler U16 at the Louisville Gas and Electric Company, Cane Run Generating Station (LG & E Cane Run Facility).

DATES: This rule will be effective September 29, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0675. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by telephone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Ozone is created when chemical reactions between volatile organic compounds (VOC) and nitrogen oxides (NO_X) occur in the presence of sunlight. Ozone is reduced by reducing VOC and NO_X emissions. The Louisville Metro Air Pollution Control District (LMAPCD) adopted regulation 6.42 *Reasonably Available Control Technology Requirements for Major Volatile Organic Compound and Nitrogen Oxides Emitting Facilities* on February 2, 1994. LMAPCD's regulation 6.42 was submitted to EPA, through the Commonwealth of Kentucky, on May 21, 1999. On October 23, 2001, EPA approved LMAPCD's regulation 6.42, section 4.4 of which requires LMAPCD to submit each source-specific reasonably available control technology (RACT) determination to EPA for approval into the Kentucky SIP. *See* 66 FR 53658. On the same date, EPA approved the NO_X RACT plan for LG & E's Cane Run Facility into the SIP. *See* 66 FR 53684.

On June 13, 2011, LG & E submitted to the Air Pollution Control Board of Jefferson County (Board) an application for a permit to construct a new NGCC generating unit U15 and auxiliary boiler U16 and retire coal-fired units U4, U5 and U6 at LG & E's Cane Run Facility to comply with other federal requirements, including the Mercury & Air Toxics Standards and the Cross-State Air Pollution Rule.[1] In response, on July 18, 2012, the Board adopted Amendment 2 establishing NO_X emission rates for the new units. On February 13, 2013, KY DAQ, on behalf of LMAPCD, submitted a SIP revision for EPA to approve the LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 into the Kentucky SIP. The LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 includes two parts: Part 1, the existing NO_X RACT Plan for the coal-fired units, which will remain in effect until those units are retired; and Part 2, the plan that will become effective upon the start of operation of the NGCC facility and the shut-down of the coal-fired units.

In a notice of proposed rulemaking (NPRM) published on June 15, 2016 (81 FR 39002), EPA proposed to approve Kentucky's February 13, 2013, submission, for the purpose of establishing emission requirements for the changeover from coal-fired units U4, U5 and U6 to a new NGCC generating unit U15 and auxiliary boiler U16 at the LG & E Cane Run Facility. No comments were received on the June 15, 2016, proposed rulemaking. The details of Kentucky's submittal and the rationale for EPA's actions are further explained in the NPRM. *See* 81 FR 39002 (June 15, 2016).

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of KY DAQ source-specific provision entitled "Air Pollution Control Board of Jefferson County Board Order—Amendment 2," approved by LMAPCD on July 18, 2012. Therefore, this material has been approved by EPA for inclusion in the SIP, has been incorporated by reference by EPA into that plan, is fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information)

III. Final Action

EPA is taking final action to approve the February 13, 2013, Kentucky SIP revision which adds LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2 to the federally-approved Kentucky SIP. This SIP revision includes emission requirements for the changeover from coal-fired units to natural gas-fired combined cycle EGUs and associated equipment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely

---

[1] Amendment 2 of the February 13, 2013, submittal includes a Dew Point Heater (U17). In 2014, LG&E notified LMAPCD that LG&E is not installing U17 after all.

[2] 62 FR 27968 (May 22, 1997).

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 31, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 17, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S—Kentucky

■ 2. Section 52.920(d) is amended by adding a new entry "LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2" at the end of the table to read as follows:

§ 52.920 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
* *	*	*	* *	*
LG & E Cane Run Generating Station NO_X RACT Plan Amendment 2.	N/A	7/18/2012	8/30/2016, [Insert citation of publication].	

* * * * *

[FR Doc. 2016–20656 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0096; FRL–9951–48–Region 9]

Air Plan Approval; Reno, Nevada; Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Nevada. On July 3, 2008, the EPA redesignated the Truckee Meadows area, consisting largely of the cities of Reno and Sparks in Washoe County, Nevada, from nonattainment to attainment for the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) and approved the State's plan addressing the area's maintenance of the NAAQS for ten years. On November 7, 2014, the State of Nevada submitted to the EPA a second maintenance plan for the Truckee Meadows area that addressed maintenance of the NAAQS through 2030. The EPA is now approving this second maintenance plan. The EPA is also finding adequate and approving transportation conformity motor vehicle emissions budgets (MVEBs) for the years 2015, 2020, 2025 and 2030. We are taking these actions under the Clean Air Act (CAA or "the Act").

DATES: This rule is effective on October 31, 2016 without further notice, unless the EPA receives adverse comments by September 29, 2016. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–

OAR–2016–0096 at *http://www.regulations.gov,* or via email to John Kelly, Air Planning Office at *kelly.johnj@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Kelly, EPA Region IX, (415) 947–4151, *kelly.johnj@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

- I. Background
  - A. Truckee Meadows Attainment Status
  - B. 2014 Maintenance Plan
  - C. Transportation Conformity
- II. The EPA's Evaluation of Nevada's Submittal
  - A. Ambient Air Quality Monitoring Data
  - B. Attainment Inventory
  - C. Maintenance Demonstration
  - D. Transportation Conformity
  - E. Ambient Air Quality Monitoring Network
  - F. Verification of Continued Attainment
  - G. Contingency Plan
- III. Public Comment and Final Action
- IV. Statutory and Executive Order Reviews

I. Background

A. Truckee Meadows Attainment Status

Under the CAA Amendments of 1990, the Truckee Meadows area (hereinafter referred to as Truckee Meadows, the Truckee Meadows area or the area), which includes the Reno-Sparks metropolitan area in Washoe County, Nevada, was designated and classified as a moderate CO nonattainment area.[1]

The primary CO NAAQS are attained when ambient concentration design values do not exceed either the 1-hour 35 parts per million (ppm) (or 10 milligrams per cubic meter) standard or the 8-hour 9 ppm (or 40 milligrams per cubic meter) standard more than once per year. *See* 40 CFR 50.8(a). According to monitoring data going back to 1980 in the EPA's[2] Air Quality System (AQS), Truckee Meadows has not had a violation of the 1-hour CO standard.[3] Regarding the 8-hour standard, the area has not had a violation since 1991.[4] The EPA determined in 2005 that the area had attained the CO NAAQS by the area's December 31, 1995 attainment deadline. *See* 70 FR 22803 (May 3, 2005). This determination did not affect the designation of the area as nonattainment or its classification as a moderate area.

On November 4, 2005, the State of Nevada ("State" or "Nevada") submitted a request to the EPA to redesignate Truckee Meadows from nonattainment to attainment for the CO NAAQS. Along with this request, the State submitted a CAA section 175A(a) maintenance plan, which demonstrated that the area would maintain the CO NAAQS for the first 10 years following our approval of the redesignation request ("2005 Maintenance Plan"). We approved the State's redesignation request and 10-year maintenance plan on April 2, 2008. *See* 73 FR 38124 (July 3, 2008). For a detailed history of the CO planning efforts in the area up to 2005, please see the EPA's proposal to approve the 2005 Maintenance Plan. *See* 73 FR 1175 at 1177 (January 7, 2008).

B. 2014 Maintenance Plan

Eight years after an area is redesignated to attainment, CAA section 175A(b) requires the State to submit a subsequent maintenance plan to the EPA, covering a second 10-year period.[5] The second maintenance plan must demonstrate continued compliance with the NAAQS during this second 10-year period. To fulfill this requirement of the CAA, Nevada submitted the second 10-year update of the Truckee Meadows area CO maintenance plan to the EPA on November 7, 2014. The plan was developed by the Washoe County Health District's (District) Air Quality Management Division (AQMD) and is titled "Second 10-Year Maintenance Plan for the Truckee Meadows 8-Hour Carbon Monoxide Attainment Area, August 28, 2014" (hereinafter, "2014 Maintenance Plan" or "Plan"). The 2014 Maintenance Plan was adopted by the District's Board of Health on August 28, 2014. *See* Washoe County Board of Health Certificate of Adoption, August 28, 2014. Air quality planning and monitoring in Truckee Meadows is the responsibility of the District, which administers air quality programs in Washoe County through the AQMD. The State Environmental Commission and the Nevada Department of Motor Vehicles are responsible for the motor vehicle inspection and maintenance program in Truckee Meadows.

C. Transportation Conformity

Section 176(c) of the Act defines conformity as meeting the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The federal transportation conformity rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of Federal funds under Title 23 U.S.C. or the Federal Transit Laws.

The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable SIP with MVEBs, the expected emissions from planned transportation activities must be consistent with such established budgets for that area.

---

[1] For a detailed description of air quality planning in the area, see the EPA's proposal to approve the first 10-year maintenance plan, published in the **Federal Register** on January 7, 2008, 73 FR 1175 at 1177. The CO attainment table in 40 CFR 81.329 lists the area as "Reno Area: Washoe County (part) Truckee Meadows Hydrographic Area 87."

[2] The initials EPA, and the words "we," "us," or "our" mean or refer to the United States Environmental Protection Agency.

[3] *See* Truckee Meadows 1980–2016 1-Hour CO Violation Day Count Report, data pulled from AQS on August 1, 2016.

[4] 2014 Maintenance Plan, page 1. *See also,* Truckee Meadows 1991–2016 8-Hour CO Violation Day Count Report, data pulled from AQS on August 1, 2016, which verifies the District's assertion in the 2014 Maintenance Plan that there have been no 8-hour CO violations in the Truckee Meadows area since 1991. This report also includes more recent monitoring data (up through the first quarter of 2016) than the 2014 Maintenance Plan.

[5] In this case, the initial maintenance period extends through 2018. Thus, the second 10-year period must extend at least through 2028. The District's demonstration is for maintenance through 2030.

II. The EPA's Evaluation of Nevada's Submittal

The 2014 Maintenance Plan contains the following major sections: (1) An introductory section containing a general discussion of plan approvals and the area's redesignation to attainment; and (2) a maintenance plan section including subsections on the attainment emissions inventory, a maintenance demonstration, MVEBs, the area's monitoring network, verification of continued attainment, and a contingency plan. *See* 2014 Maintenance Plan, Chapters 1 and 2.

Following is the EPA's evaluation of the 2014 Maintenance Plan under the CAA, the EPA's implementing regulations and relevant guidance.

A. Ambient Air Quality Monitoring Data

As noted above, the primary NAAQS for CO are: 9 ppm (or 10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year and 35 ppm (or 40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. *See* 40 CFR 50.8(a).

The 2014 Maintenance Plan includes a summary of 8-hour CO design values for the years 2008 to 2013. *See* 2014 Maintenance Plan, Table 1–1, page 2. In addition, the EPA examined monitoring data for Truckee Meadows for the last ten years, including a large portion of the period covered by the first maintenance plan. Table 1 shows the complete, quality assured and certified ambient air monitoring design values for CO in the area for the years 2006 to 2015 and preliminary data for 2016. The first maintenance plan covers the years 2008–2018. The year 2015 is the last year for which we have complete, quality assured and certified ambient air monitoring design values for CO in the area. The monitoring data show that CO design values in the Truckee Meadows area have been well below the level of the NAAQS throughout the last decade.

TABLE 1—CO DESIGN VALUES FOR TRUCKEE MEADOWS, NV, YEARS 2006–2015

Design Values (ppm)[6]		Years
1-Hour	8-Hour	
4.8	3.3	2006
4.7	3.3	2007
3.9	2.9	2008
4.2	2.6	2009
3.1	2.6	2010
3.4	2.6	2011
2.8	2.3	2012
2.8	2.4	2013
3.2	2.4	2014
2.7	2.0	2015
2.2	1.5	[7] 2016

B. Attainment Inventory

Due to the area's status at the time as moderate nonattainment for the CO standards, the District developed a 1990 baseline emissions inventory and has continued to update the inventory pursuant to CAA requirements every three years. The most recent inventory at the time the state submitted the 2014 Maintenance Plan was for the year 2011. The District is using the 2011 emissions inventory, adjusted down due to unusually high wildfire emissions that occurred that year, as the attainment inventory. The District refers to this attainment inventory as the Truckee Meadows maintenance emissions limit. With the level of emissions that occurred in 2011, the area still attained the CO standards. Levels at or below the downward-adjusted 2011 emissions (that is, the Truckee Meadows maintenance emissions limit) are therefore expected to maintain the standards. The unadjusted emissions levels are presented in Table 2. The District then adjusts the nonpoint source category to reflect more representative wildfire emissions, and then uses the adjusted total emissions for the area as the maintenance emissions limit, as explained in section III.C below.

TABLE 2—2011 CO INVENTORY

Source category	2011 Inventory (pounds per day)
Point	3,361
Nonpoint	154,956
Non-road	50,706
On-road	163,500
Total *	372,522

* Totals may not add up due to rounding.

The EPA finds that the 2011 inventory information presented by the District is acceptable and consistent with the source category amounts and totals for the 2011 National Emissions Inventory for Washoe County, with one exception. The District's information does not account for railroad (locomotive) emissions. Locomotive emissions would add 3.6 tons per year of CO emissions to the area, or 19.7 pounds per day (lbs/day). Compared to a total inventory of 372,522 lbs/day, however, the omission of railroad emissions amounts to less than 0.01% of the total CO emissions for the area, and the EPA therefore does not believe the omission to be significant.

C. Maintenance Demonstration

In general, a state may demonstrate that an area will maintain the NAAQS by showing that future emissions will not exceed the level of the attainment inventory.[8] Attainment must be demonstrated for the 10-year period following the first ten years covered by the initial maintenance plan. For the Truckee Meadows area, the first maintenance period ranges from 2008, when the EPA approved the area's redesignation request and maintenance plan, through the year 2018. In the 2014 Maintenance Plan, the District must also demonstrate attainment for the 10-year period following the first ten years. The 2014 Maintenance Plan covers a portion of the first 10-year period (through 2018), as well as the second ten years, 2018 through 2028. In addition, a state may go beyond the minimum requirements of the CAA. The District has elected to make the horizon year for this Plan 2030 for the convenience of transportation planning.

Although the 2005 Maintenance Plan addresses maintenance through the year 2018, the emissions projections of the 2014 Maintenance Plan replace those from the previous plan. The District's rationale is that there are now better planning assumptions and improved emissions calculation methodologies that were not available in developing the previous plan. Updated methodologies include the change from using MOBILE6 mobile source modeling software, used for the 2005 Maintenance Plan, to the MOVES model used for the 2014 Maintenance Plan.

---

[6] Design values were derived from AQS. The EPA notes that the 8-hour CO design value given in the 2014 Maintenance Plan for the year 2011 (*i.e.,* 2.9 ppm) appears to be in error and should actually be as shown (*i.e.,* 2.6 ppm). For 1-hour CO design values, see the Truckee Meadows 1-Hour CO 2006–2016 Maximum Values Report, dated August 1, 2016. For 8-hour CO design values, see the Truckee Meadows 8-Hour CO 2006–2016 Maximum Values Report, dated August 1, 2016.

[7] Preliminary design values for 2016 through March 31, 2016. *See* Truckee Meadows 2016 1-hour Completeness Report, dated August 1, 2016.

[8] *See* the EPA's September 4, 1992 John Calcagni memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," at page 9, available online at: *https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

As noted above, the District used its 2011 periodic emissions inventory[9] to develop the baseline 2011 "maintenance emissions limit" for the Truckee Meadows area, which is then used to compare future emissions inventories for the purpose of verifying continued attainment of the CO NAAQS as long as those future emissions are lower than the maintenance emissions limit.

As shown in Table 3, for most emissions categories, the District simply used emission levels from the 2011 periodic emissions inventory to develop its 2011 maintenance emissions limit. However, for wildfires, the District noted that 2011 was an unusually active year for wildfires, with corresponding CO emissions of 105,092 lbs/day. To approximate more typical wildfire emissions for purposes of producing the 2011 Truckee Meadows maintenance emissions limit, the District used the average of wildfire emissions for the four previous inventory years (1999, 2002, 2005, and 2008). That average is 217 lbs/day, which the District used to adjust the nonpoint source category. Due to this adjustment, total nonpoint emissions for the nonpoint source category are 50,081 lbs/day for the maintenance emissions limit, as compared with 154,956 lbs/day in the 2011 emissions inventory, as shown in Table 3. *See* 2014 Maintenance Plan, Table 2–3.

TABLE 3—TRUCKEE MEADOWS CO EMISSIONS INVENTORIES, IN POUNDS PER DAY

Source category	2011 Periodic inventory (lbs/day)	2011 Maintenance emissions limit (lbs/day)
Point	3,361	3,361
Nonpoint	154,956	50,081
Non-Road Mobile	50,706	50,706
On-Road Mobile	163,500	163,500
Total *	372,522	267,648

* Totals may not add up due to rounding.

The District supports its use of 267,648 lbs/day maintenance emissions limit as the attainment inventory because it uses the most accurate emissions inventory methodologies, is a current and comprehensive emissions inventory, identifies the level of emissions in the Truckee Meadows area sufficient to maintain the CO standards, and will be the emissions inventory most consistent with the 2030 projected inventory required for demonstrating maintenance of the CO standards. *See* 2014 CO Maintenance Plan, page 6.

The District used the following methodologies or models, as described in EPA guidance,[11] to project the 2011 maintenance emissions limit (*i.e.* the 2011 periodic emissions inventory adjusted to exclude unusually high wildfire emissions) out to future milestone years 2015, 2020, 2025 and 2030 for each of the emissions source categories, in order to demonstrate continued maintenance with the CO NAAQS.

1. Baseline Emissions Projections. Washoe County's 2030 population, employment and vehicle miles travelled (VMT) forecasts (2014 Maintenance Plan, Appendix A) were used as surrogates to project the 2030 emissions, and were consistent with those used by the local metropolitan planning organization.

2. EPA Models. Non-road and on-road motor vehicle categories accounted for approximately 59% of the 2011 emissions inventory. To ensure consistency throughout the maintenance demonstration period, the same non-road and on-road models were used to estimate the 2030 projected emissions inventory.

3. Emissions Category Surveys. The District uses surveys to estimate emissions from residential wood combustion (RWC). The District applied an adjustment factor based on heating degree days to the most recent survey (conducted in 2012–2013) to project RWC emissions from 2015 through 2030. *See* 2014 Maintenance Plan, Appendix A.1

Table 4 lists the 2011 Truckee Meadows maintenance emissions limit and projected emissions for 2015, 2020, 2025 and 2030 for the four major CO emissions source categories in the area. *See* 2014 Maintenance Plan, Table 2–4. The District provides a more detailed inventory for 2011 and projected future years in the 2014 Maintenance Plan, Appendix B.

TABLE 4—TRUCKEE MEADOWS CO MAINTENANCE EMISSIONS INVENTORIES (LBS/DAY)

Source category	2011 *	2015	2020	2025	2030
Point	3,361	3,768	4,357	4,974	5,678
Nonpoint	50,081	47,820	45,236	42,845	40,355
Non-Road	50,706	43,725	45,385	48,320	51,656
On-Road	163,500	150,330	140,129	138,938	142,686
Total **	267,648	245,642	235,107	235,077	240,375

* Truckee Meadows maintenance emissions limit.
** Totals may not add up due to rounding.

---

[9] *See* Washoe County, Nevada: 2011 Periodic Emissions Inventory and Appendices A, B, and C.

[10] *See* "Procedures for Preparing Emissions Projections," EPA–450/4–91–019, July 1991, available online at *https://www.epa.gov/nscep.*

The District projects that population, number of households, employment and VMT will increase through 2030 and beyond, but that federally enforceable CO control programs targeting gasoline-powered motor vehicles, RWC and diesel-powered motor vehicles will help offset this growth. Because future emissions are not projected to exceed the level of the 2011 Truckee Meadows maintenance emissions limit of 267,648 lbs/day, the District asserts that the CO NAAQS will be maintained through the maintenance demonstration period.[11]

The EPA agrees with the District's conclusion. Even with the growth expected in the area in the future, overall emissions of CO in the area are declining and provide assurance that the area will not violate the CO standard in the future. With respect to wildfire emissions, we find that the District's approach of adjusting both the attainment inventory (*i.e.,* the maintenance emissions limit) and the projected future year emissions inventories to exclude unusually high 2011 wildfire emissions is reasonable.

D. Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA section 176(c)(1)(B). The EPA's conformity rule at 40 CFR part 93, subpart A requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. To effectuate its purpose, the conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan and the Transportation Improvement Program are consistent with the MVEBs contained in the applicable control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. An MVEB is defined as the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to show compliance with the NAAQS in the nonattainment or maintenance area.[12]

The EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Notifying the public of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy. *See* 40 CR 93.118(f). In order for us to find an MVEB adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). The 2005 Maintenance Plan established CO MVEBs (in terms of pounds per typical CO season day) of 330,678 pounds per typical CO season day in year 2010 and 321,319 pounds per typical CO season day in year 2016. The EPA found the CO MVEBs adequate for transportation conformity purposes effective March 30, 2006 (March 15, 2006, 71 FR 13386)[13] and approved the MVEBs on July 3, 2008 (73 FR 38124).

The 2014 Maintenance Plan establishes new MVEBs for CO, as shown in Table 5.

TABLE 5—TRANSPORTATION CONFORMITY MOTOR VEHICLE EMISSIONS BUDGETS FOR THE TRUCKEE MEADOWS CO MAINTENANCE AREA

[lbs/day]

Year	2015	2020	2025	2030
CO MVEB	172,336	172,670	171,509	169,959

The District developed these MVEBs using emissions inventory projections for the years 2015 through 2030. The MVEBs include on-road vehicles, heavy duty diesel vehicle idling, and a safety margin. The latter is the excess emissions between the total projected emissions for a specific year and the 2011 maintenance emissions limit. We note that the MVEBs in the 2014 Maintenance Plan differ from those contained for similar years in the 2005 Maintenance Plan. These differences are due to the use of the latest planning assumptions for the transportation network, including VMT, vehicle speeds and vehicle population for passenger cars and trucks, in the development of the Washoe County 2011 periodic emissions inventory. As in previous periodic emissions inventories, these planning assumptions were consistent with those used by the local metropolitan planning organization for their transportation plans.

We are not announcing the availability of these MVEBs through the EPA's Adequacy Web site and providing a separate comment period on the adequacy of the MVEBs. Instead, we are reviewing the adequacy of the MVEBs simultaneously with our review of the 2014 Maintenance Plan itself. *See* 40 CFR 93.118(f)(2). In order to determine whether these MVEBs are adequate and approvable, we have evaluated whether the MVEBs meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5) and have determined that the MVEBs meet the applicable criteria. These criteria include, for example, that the MVEBs are clearly identified and precisely quantified, that the Plan shows a clear relationship among the emissions budgets, control measures and the total emissions inventory, among other criteria. The details of the EPA's evaluation of the MVEBs are provided in a memo to file for this rulemaking.[14]

In accordance with the State's request and the EPA's evaluation, with this action the EPA finds adequate and approves CO MVEBs for the years 2015, 2020, 2025 and 2030. Upon the effective date of this action, the Washoe County Regional Transportation Commission and the U.S. Department of Transportation must use these budgets in future conformity analyses. Any and all comments on the adequacy and approvability of the 2015, 2020, 2025 or 2030 MVEBs should be submitted during the comment period stated in the **DATES** section of this document.

---

[11] Although the summary paragraph following Table 2–4 in the plan compares future year projections shown in the table to the "2011 Truckee Meadows maintenance emissions inventory," EPA believes that the District clearly intended to make the comparison to the "Truckee Meadows Maintenance Emissions Limit," as the District stated in this single-asterisk (*) note to the table. *See* 2014 Maintenance Plan, page 7.

[12] Further information concerning the EPA's interpretations regarding MVEBs can be found in the preamble to the EPA's November 24, 1993, transportation conformity rule (*see* 58 FR 62193–62196).

[13] *See also* letter from Deborah Jordan, Director, U.S. EPA Region 9 Air Division, to Leo M. Drozdoff, P.E., Director, Nevada Division of Environmental Protection, dated February 14, 2006, available online at: *https://www3.epa.gov/otaq/stateresources/transconf/adequacy/ltrs/truckee033006.pdf.*

[14] *See* memo from John J. Kelly, Air Planning Office, EPA Region 9, to Docket EPA–R09–OAR–2016–0096, dated August 5, 2016.

E. Ambient Air Quality Monitoring Network

The District has maintained an ambient air quality monitoring network in Washoe County, including the Truckee Meadows area, in accordance with the EPA's ambient air quality monitoring network regulations in 40 CFR part 58. Monitors are operated by the District, and they submit an Annual Network Plans (ANPs) for the County to the EPA.

The EPA is currently reviewing the 2016 ANP submitted by the District.[15] The EPA approved the District's previous ANPs, the most recent three of which were submitted to the EPA by the District in 2013,[16] 2014 [17] and 2015.[18] The docket to this action includes these approvals and the associated ANPs, as well as the ANP currently under review.

In addition to reviewing the District's ANPs, the EPA performs Technical Systems Audits (TSAs) of ambient air monitoring programs in accordance with 40 CFR part 58, appendix A, section 2.5, which requires that the EPA conduct a TSA of each primary quality assurance organization (PQAO) every three years. A PQAO is an organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled. The District is the PQAO for CO monitoring in Washoe County, which includes the Truckee Meadows area. *See* 40 CFR 58.1.

The most recent TSA for the District was conducted by the EPA in 2016, but the report for that TSA has not yet been finalized. The most recent TSA for which the final report is available was conducted in 2013. The EPA found that the District's air monitoring program was robust and met the EPA's requirements. There were no findings that were cause for data invalidation.[19]

In the 2014 Maintenance Plan, the District commits to continued operation of its CO monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the Truckee Meadows area. *See* 2014 Maintenance Plan, page 8. In addition, the District will continue to review the Washoe County CO monitoring network pursuant to 40 CFR 58.10 to ensure the network meets the monitoring objectives defined in 40 CFR part 58, appendix D. Funding for the monitoring network to meet its objectives has been derived in the past primarily from CAA section 105 grants and the State's Department of Motor Vehicles. The District commits to maintaining these funding sources. *See* 2014 Maintenance Plan, page 8.

The District commits to the continuation of collecting and quality-assuring ambient CO monitoring data in accordance with 40 CFR part 58 and to providing the data to the EPA's AQS. The data will therefore be available for public review. *See* 2014 Maintenance Plan, page 9.

Table 6 lists the active Washoe County CO monitoring sites identified in the Plan. *See* 2014 Maintenance Plan, page 9, Table 2–7. As noted in the footnotes to the table, two of the monitoring sites have since discontinued CO monitoring (*i.e.,* South Reno and Galletti), and the District has indicated that it intends to submit to the EPA a request to shut down two more sites (*i.e.,* Toll and Lemmon Valley). The EPA notes that the Lemmon Valley monitoring site is within Washoe County but is not located in the Truckee Meadows area.

TABLE 6—ACTIVE WASHOE COUNTY CO MONITORING SITES

Site ID	Site name	Site address	City
32–031–0016	Reno3	301A State Street	Reno.
32–031–0020	South Reno *	4110 DeLucchi Lane	Reno.
32–031–0022	Galletti *	305 Galletti Way	Reno.
32–031–0025	Toll **	684A State Route 341	Reno.
32–031–1005	Sparks	750 4th Street	Sparks.
32–031–2009	Lemmon Valley **	325 W. Patrician Drive	Reno.

* The District discontinued CO monitoring at the South Reno and Galletti monitoring sites in 2014. Details of these network modifications, as well as copies of the EPA's approval letters, can be found in the District's 2015 ANP (Appendices A and B).

** In its 2016 ANP, the District indicates it will seek EPA approval to discontinue CO monitoring at the Toll and Lemmon Valley monitoring sites, but will not discontinue monitoring at these locations without such approval. See the District's 2016 ANP.

The District is required to maintain a CO monitor at the Reno3 site. *See* 40 CFR part 58, appendix D, section 3. Other CO monitoring sites are not required for Washoe County by the EPA's minimum monitoring requirements. *See* 40 CFR part 58, appendix D, section 4.2.

Based on the information in the 2014 Maintenance Plan, as well as recent ANPs and the 2013 TSA report, the EPA has determined that the area's air quality monitoring network meets the requirements of the CAA and implementing regulations in 40 CFR part 58.

F. Verification of Continued Attainment

To support the District's continued operation and maintenance of the Washoe County ambient CO monitoring network, the District also commits to tracking actual CO emissions, in order to identify potential increases in ambient CO concentration. The District has three existing mechanisms to track CO emissions.

1. *Periodic Emissions Inventories.* The District commits to continuing to prepare and submit to the EPA a

---

[15] "Washoe County Health District Air Quality Management Division 2016 Ambient Air Monitoring Network Plan," dated July 1, 2016.

[16] "Washoe County Health District Air Quality Management Division 2013 Ambient Air Monitoring Network Plan," dated July 1, 2013 and our approval, letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region 9 to Daniel Inouye, Chief, Monitoring and Planning Branch, Air Quality Management Division, Washoe County Health District, dated December 11, 2013.

[17] "Washoe County Health District Air Quality Management Division 2014 Ambient Air Monitoring Network Plan," dated July 1, 2014 and our approval, letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region 9 to Daniel Inouye, Chief, Monitoring and Planning, Air Quality Management Division, Washoe County Health District, dated October 29, 2014.

[18] "Washoe County Health District Air Quality Management Division 2015 Ambient Air Monitoring Network Plan," dated July 1, 2015 and our approval, letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region 9 to Daniel Inouye, Chief, Monitoring and Planning, Air Quality Management Division, Washoe County Health District, dated October 21, 2015.

[19] See letter from Deborah Jordan, Director, U.S. EPA Region 9 Air Division, to Charlene Albee, Director, Air Quality Management Division, Washoe County Health District, dated August 19, 2014, transmitting a report titled "Technical System Audit Report, Washoe County Health District Air Quality Management Division Ambient Air Monitoring Program (September 4–6, 2013)."

comprehensive periodic CO emissions inventory on a triennial schedule. Prior to submittal of the 2014 Maintenance Plan, the last periodic emissions inventory prepared was for the year 2011. *See* 2014 Maintenance Plan, page 9. In addition, the District has prepared and submitted to the EPA a periodic emissions inventory for the area for 2014.

2. *Consolidated Emissions Reporting Rule (CERR) and Air Emissions Reporting Rule (AERR).* The EPA's AERR (40 CFR part 51 subpart A), which incorporates the former CERR, requires regular updates of point and area emissions sources within Washoe County. The District commits to continued compliance with the CERR and AERR. *See* 2014 Maintenance Plan, page 10.

3. *Residential Wood Use Survey.* RWC is a significant source of CO emissions during the winter in Truckee Meadows. Between 1993 and 2013, the District completed nine residential wood use surveys. These surveys estimated the device (*i.e.,* fireplace, woodstove and pellet stove) population, the amount of wood burned, and CO emissions from RWC in Washoe County. As part of the 2014 Maintenance Plan, the District renews the commitment it made in the 2005 Maintenance Plan to conduct a residential wood use survey at least once every three years. *See* 2014 Maintenance Plan, page 10.

The EPA agrees with the District that continued ambient air monitoring and emissions tracking will ensure verification of continued attainment and maintenance of the 8-hour CO NAAQS within the Truckee Meadows area.

G. Contingency Plan

Section 175A of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of a NAAQS that occurs after the redesignation to attainment of an area for that NAAQS. As a maintenance area for CO, this requirement applies to Truckee Meadows. According to the EPA's guidance,[20] the contingency plan for a maintenance area should clearly identify the following:

- Specific indicators or triggers that will be used to determine when contingency measures need to be implemented;
- contingency measures to be adopted;
- schedule and procedures for adoption and implementation; and
- specific time limit for action.

The following is the EPA's analysis of the 2014 CO Maintenance Plan's contingency plan regarding the above four criteria:

The 2014 Maintenance Plan identifies significant sources that contribute to the highest CO concentrations during the winter CO season months, November through January. The 2014 Maintenance Plan includes a two-tiered contingency plan based on ambient air monitoring data.

As part of the EPA's approval into the SIP of the 2005 Maintenance Plan, we approved a contingency plan for the area. Part of the contingency plan ("Tier 1"), as discussed in greater detail below, relies entirely on the area's emergency episode plan. Such plans are required under CAA section 110(a)(2)(G). We approved the District's emergency episode plan on June 18, 2007 (72 FR 33397).

1. Contingency Plan Tier 1

a. Specific Indicators or Triggers Which Will Be Used To Determine When Contingency Measures Need To Be Implemented

The Tier 1 trigger mechanism is a single exceedance of the 8-hour CO standard, that is, a monitored concentration greater than or equal to 9 ppm (9.5 ppm to adjust for rounding), at any State and Local Air Monitoring Station (SLAMS), Special Purpose Monitoring (SPM) or national Core Multi-Pollutant Monitoring Station (NCore) site operated within Washoe County. The EPA notes that this trigger is protective of the 8-hour CO NAAQS in three respects.

First, it takes two non-overlapping CO exceedances to violate the standard. The CAA requires that, at a minimum, contingency measures be triggered when the standard is violated. In the 2014 Maintenance Plan, the District is committing to triggering this Tier 1 portion of its contingency plan with a single exceedance. This entails implementation of a contingency measure upon an exceedance of the CO NAAQS, before the NAAQS is violated.

Second, the trigger for Tier 1 can occur at any monitor in the County. This is more protective of the CO NAAQS than would otherwise be required by the Act in that the District is required to trigger Tier 1 using an exceedance of any monitor in Washoe County, rather than relying only on the monitors within the Truckee Meadows maintenance area within the County.

Third, implementation of Tier 1 would occur in the entire jurisdiction of the District, that is, County-wide. Controls related to the Stage 1 Alert episode would be implemented in the entire County, which could benefit the Truckee Meadows area within the County.

b. The Contingency Measures To Be Adopted

As we noted above, the EPA has already approved the District's emergency episode plan into the SIP. This emergency plan currently is triggered, independent of any contingency plan, during any monitored or predicted concentration at a level of 9.4 ppm or above. Once the emergency plan is triggered, the duration of its implementation depends on the circumstances of the episode, regarding monitored and predicted levels of CO.

In the Tier 1 contingency measure, the District will initiate a rulemaking to permanently lower the County-wide Stage 1 Alert activation level from 9.4 ppm down to 9.0 ppm. The District will initiate this rulemaking if a monitored CO concentration is above 9.4 ppm (*i.e.,* 9.5 ppm or above). Monitors that can activate Tier 1 include any monitor in the entire County, that is, not just within the Truckee Meadows area. For informational purposes, Table 7 lists the actions the District takes once a Stage 1 Alert level is either recorded or predicted for the County. *See* 2014 Maintenance Plan, page 11. When Tier 1 is triggered, the District will initiate a specific rulemaking change for adoption by the District's Board of Health (WCDBOH). In the event Tier 1 is triggered, the District would initiate revision of WCDBOH Regulation 050.001, Emergency Episode Plan (adopted March 23, 2006). The rule revision would revise the Stage 1 Alert level from the current level of 9.4 ppm down to the lower level of 9.0 ppm.

---

[20] EPA's September 4, 1992 memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment," at page 12, available online at: *https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

TABLE 7—STAGE 1 ALERT EPISODE ACTIONS

Stage 1 alert episode action description	WCDBOH regulation No.
Terminate open burning	040.035 and 050.001.
Terminate use of incinerators subject to District operating permits	050.001.
Curtailment of unnecessary motor vehicle use through the District's public outreach program	050.001.
Prohibition of the burning of solid fuel in any commercial or residential stoves and/or fireplaces with the Truckee Meadows area.	040.051 and 050.001.
Curtailment of all District permitted sources that have the potential to emit 50 tons or more of CO per year with the Truckee Meadows area.	050.001.

c. A Schedule and Procedures for Adoption and Implementation

The implementation schedule the District identifies in the 2014 Maintenance Plan is meant to begin the rulemaking process promptly. The rule revision must be adopted by the WCDBOH and implemented before the next CO season (*i.e.*, November, December and January).

The District also commits to notify the EPA Region 9 office within 45 days of the triggering of tier 1. *See* 2014 Maintenance Plan, page 11.

d. A Specific Time Limit for Action

The schedule discussed above provides a specific time limit for action by the Board in that the rule revision is to be adopted and implemented before the next CO season.

2. Contingency Plan Tier 2

a. Specific Indicators or Triggers Which Will Be Used To Determine When Contingency Measures Need To Be Implemented

The Tier 2 trigger mechanism is a second, non-overlapping exceedance of the 8-hour CO standard (*i.e.*, greater than or equal to 9.5 ppm to adjust for rounding) at any SLAMS, SPM or NCore site operated within Washoe County. The EPA notes that only a second non-overlapping exceedance at the same monitor would constitute a violation of the 8-hour CO NAAQS, so this approach is more protective of the standard than is required by the form of the standard itself. Also, the EPA notes that this trigger is also more protective of the CO NAAQS than is required because it goes beyond the boundary of the Truckee Meadows area and encompasses the entire Washoe County District.

b. The Contingency Measures To Be Adopted

For Tier 2, the District will maintain a list of potential contingency measures and provide recommendations to the WCDBOH. The District's recommendations to the Board will include a timeline for adoption and implementation to promptly correct any violation of the CO NAAQS. The list of Tier 2 potential contingency measures are shown in Table 8. *See* 2014 CO Maintenance Plan, Table 2–8.

TABLE 8—TIER 2 POTENTIAL CONTINGENCY MEASURES

Emission category	Potential contingency measure
Residential Wood Combustion	• Increase one-acre lot size exemption. • Mandatory curtailment at lower CO concentrations. • Change-out program to cleaner-burning devices.
Mobile Sources	• Strengthen inspection and maintenance smog check program. • Reinstate oxygenated fuels program. • Non-road and on-road diesel engine repowers and rebuilds. • Truck Stop Electrification systems. • Fleet modernization. • Strengthen maximum idling time for diesel vehicles.

c. A Schedule and Procedures for Adoption and Implementation

The implementation schedule the District identifies in the 2014 Maintenance Plan is meant to begin the rulemaking process promptly. No later than 45 days after Tier 2 is triggered, recommendations shall be presented to the Board at its next regularly scheduled meeting. The District commits to review and update as necessary the list of potential Tier 2 contingency measures at least once every three years. *See* 2014 Maintenance Plan, page 12. The District also commits to notify the EPA Region 9 office within 45 days of the triggering of Tier 2. *See* 2014 CO Maintenance Plan, page 12.

d. A Specific Time Limit for Action

The schedule discussed above for Tier 2 implementation provides a specific time limit for action by the Board. Rule revision recommendations are to be presented to the Board within a set time frame, and the Board will review and update the recommendations, as necessary, but not less than once every three years. Further, the time frame for the District to provide recommendations to the Board requires the District to present at the Board's next scheduled meeting, but no later than 45 days after triggering Tier 2. The Board typically meets every month.

Tier 2 also involves a regular review of CO control measures by the District and the Board. This review occurs at least once every three years regardless of whether there is an exceedance of the CO NAAQS.

3. Contingency Plan Conclusion

The EPA agrees with the District that prompt action and implementation of Tier 1 and Tier 2 contingency measures may prevent future exceedances and violations of the 8-hour CO NAAQS. The EPA believes the District's two-tiered contingency plan will promptly address violations if they do occur. Triggering contingency measures at monitored concentration levels that exceed, but do not violate the standard, is an important component of this approach.

III. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the State of Nevada's second 10-year maintenance plan, titled "Second 10-Year Maintenance Plan for the Truckee Meadows 8-Hour Carbon Monoxide Attainment Area, August 28, 2014." We are also approving MVEBs for the years 2015, 2020, 2025 and 2030.

We do not think anyone will object to these approvals, so we are finalizing them without proposing them in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted Plan and MVEBs. If we receive adverse comments by September 29, 2016, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 31, 2016. This will incorporate this plan into the federally enforceable SIP and require use of the new MVEBs in all future CO conformity analyses.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 31, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 15, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470, paragraph (e) is amended by adding, under the table heading "Air Quality Implementation Plan for the State of Nevada" a new entry after the entry "Redesignation Request and Maintenance Plan for the Truckee Meadows Carbon Monoxide Non-Attainment Area (September 2005), excluding appendices B, C, and D" to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Air Quality Implementation Plan for the State of Nevada [1]				
*	*	*	*	*
Second 10-Year Maintenance Plan for the Truckee Meadows 8-Hour Carbon Monoxide Attainment Area, August 28, 2014.	Truckee Meadows, Washoe County.	11/7/14	[INSERT **Federal Register** CITATION] (8/30/16).	Fulfills requirement for second ten-year maintenance plan. Includes motor vehicle emissions budgets for 2015, 2020, 2025 and 2030.
*	*	*	*	*

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

* * * * *

[FR Doc. 2016–20662 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0034; FRL–9947–19]

Citrus tristeza Virus Expressing Spinach Defensin Proteins 2, 7, and 8; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations on citrus fruit (Citrus spp., *Fortunella spp.*, Crop Group 10–10) when applied/used as a microbial pesticide in accordance with the terms of Experimental Use Permit (EUP) No. 88232–EUP–2. Southern Gardens Citrus submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations. The temporary tolerance exemption expires on August 31, 2020.

DATES: This regulation is effective August 30, 2016. Objections and requests for hearings must be received on or before October 31, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0034, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0034 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 31, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0034, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of March 29, 2016 (81 FR 17422) (FRL–9943–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5F8418) by Southern Gardens Citrus, 1820 County Road 833, Clewiston, FL 33440. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations. That document referenced a summary of the petition prepared by the petitioner Southern Gardens Citrus, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing; however, several comments were received in response to the notice of issuance for the associated Experimental Use Permit No. 88232–EUP–2 that related to food safety and are found in Docket ID No. EPA–HQ–OPP–2016–0035. EPA's response to these comments is contained in Unit VII.B.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe " to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The pesticide chemical is *Citrus tristeza* virus that has been genetically altered to express spinach defensin proteins 2 (SoD2), 7 (SoD7), and 8 (SoD8) to combat Citrus Greening disease. Although EPA did not receive data on the altered virus itself, EPA has sufficient data to evaluate each component of the pesticide individually—*i.e.,* the *Citrus tristeza* virus and the spinach defensin proteins 2, 7, and 8. Assessing overall risk based on the virus and spinach defensin proteins' individual risks is reasonable because the antimicrobial spinach defensin proteins are unlikely to change the host range of the plant virus and the plant virus is unlikely to affect the toxicity or allergenicity profile of the antimicrobial spinach defensin proteins.

The U.S. human population has been exposed to the *Citrus tristeza* (*C. tristeza*) virus in citrus products for at least two decades since its discovery as being widespread in the Florida citrus industry in the mid-1990s. No adverse effects from this exposure in people have been reported. This lack of adverse effects is consistent with the fact that *C.* tristeza is a plant virus, which do not cause disease in humans; human intestines commonly harbor plant viruses without any adverse effect. (Ref 1).

Spinach defensin proteins are naturally found in every spinach plant, and oral exposure to the spinach plant provides exposure to these proteins. There is a long history of mammalian consumption of the entire spinach plant (both raw and cooked)—including necessarily—these defensin proteins, as food, without causing any known deleterious human health effects or any evidence of toxicity. Spinach plant leaves have long been part of the human diet, and there have been no findings that indicate toxicity or allergenicity of spinach proteins.

Bioinformatic sequence comparisons to assess the toxicity potential of spinach defensin proteins 2 (SoD2), 7 (SoD7), and 8 (SoD8) yielded no potential significant toxicity matches. Furthermore, literature searches did not produce any papers that showed any mammalian toxicity associated with spinach or spinach defensins. Available data demonstrate that SoD2, SoD7, and SoD8 proteins have very low oral toxicity. In an acute oral toxicity study conducted with a single dose of 5,000 milligram/kilogram (mg/kg) of microbial-produced SoD2 protein, no evidence of toxic or adverse effects was observed. Since SoD proteins are consumed in spinach without adverse effect and SoD2, SoD7, and SoD8 are similar both functionally in spinach and in regards to their amino acid sequence, the results of the acute oral toxicity study are applicable to all three proteins.

Because SoD2, SoD7, and SoD8 are proteins, EPA also evaluated their potential for allergenicity. A literature search was performed to identify any published studies that might implicate these spinach proteins as allergens. No scientific references were found to suggest possible allergenicity associated with spinach or these spinach proteins. Finding no indication that these proteins are derived from a known allergenic source, EPA also considered the proteins' bioinformatics and resistance to digestibility.

Searching both the *AllergenOnline.org* database and the National Center for Biotechnology Information (NCBI) Protein database for sequence similarities to known allergens, no significant sequence matches to SoD2, SoD7, and SoD8 were found using a sliding window of 80 amino acids.

In an *in vitro* study, microbial produced SoD2 and SoD7 proteins were rapidly and extensively hydrolyzed in simulated gastric and intestinal conditions in the presence of pepsin (at pH 1.2) and pancreatin, respectively. Both microbial-produced SoD2 and SoD7 proteins demonstrated half-lives of approximately five minutes when subjected to pepsin digest, and both proteins were completely proteolyzed to amino acids and small peptide fragments in less than one minute in the presence of 0.15 milligram/liter (mg/ml) pancreatin. These results indicate that both the SoD2 and SoD7 proteins are highly susceptible to degradation in conditions similar to the human digestive tract.

An evaluation of the similarities of SoD8 compared to SoD2 and SoD7 proteins to estimate SoD8 protein digestibility indicates that SoD8 should be digested very similarly to SoD2 and SoD7. The sequences are homologous, but SoD8 is longer on both the beginning and the end of the sequence. The proteins were found to be nearly identical in major overlapping sequences, while SoD8 has one more pepsin cleavage site compared to SoD2 and SoD7 which indicates that it will be even more susceptible to digestion.

Based on the source, bioinformatics, and digestibility of these proteins, EPA concludes that these spinach defensin proteins will not pose any allergenicity concerns. In sum, EPA concludes that due to the lack of toxicity and pathogenicity concerns for *C. tristeza* and any toxicity or allergenicity concerns for the spinach defensin proteins 2, 7, and 8, the altered *C. tristeza* virus expressing those spinach defensin proteins does not pose any toxicity, pathogenicity, or allergenicity concerns. Therefore, EPA did not identify any points of departure for regulating exposure, and a qualitative assessment was conducted. For further information about EPA's assessment of the *Citrus tristeza* virus that has been genetically altered to express spinach defensin proteins 2 (SoD2), 7 (SoD7), and 8 (SoD8), see the *C. tristeza* SoD2, SoD7, and SoD8 Human Health Review March 2016 found in Docket ID No. EPA–HQ–OPP–2016–0035.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for residue from genetically engineered C. *tristeza* expressing spinach defensins SoD2, SoD7, and SoD8, and exposure from non-occupational sources.

The Agency anticipates that there may be dietary exposure to *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) from the consumption of citrus products treated with this pesticide. Significant dietary exposure to spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) from use of this pesticide is not expected due to the very low expression of the defensin proteins from the C. *tristeza* vector. Dietary exposure to spinach defensins from consumption of treated citrus products containing them will be far below the amount consumed from raw and cooked spinach. Recent U.S. consumption statistics indicate that, on average, 2 lbs. of spinach are consumed per person per year in the United States. "Spinach Profile," Agricultural Marketing Resource Center (June 2013). (*http://www.agmrc.org/commodities_products/vegetables/spinach-profile/*). EPA has also approved another experimental use permit (88232–EUP–1) involving use of defensin proteins SoD2 and SoD7, to which people may be exposed. 75 kg of SoD proteins were authorized for treatment of 720 acres in Florida and Texas. May 6, 2015 (80 FR 25943) (FRL–9926–99) and August 28, 2015 (80 FR 52270) (FRL–9931–26). In terms of non-pesticidal dietary exposure, the U.S. population will continue to be exposed to *C. tristeza* virus through infected citrus plants and will continue to be exposed to these spinach defensin proteins through consumption of spinach plants.

Residues in drinking water from use of this pesticide will be extremely low or non-existent since the pesticide will be present only in the vascular tissue of citrus trees and is applied under the bark, and it is highly unlikely that any environmental exposure will occur.

The Agency does not expect there to be any non-occupational exposure to this pesticide chemical residue. Exposure via the skin or inhalation is not likely since the viral vector will be phloem limited in citrus trees, and very little phloem is present in citrus fruit, which essentially eliminates these exposure routes or reduces these exposure routes to negligible.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the EPA consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Citrus tristeza virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) is not toxic and does not have a common mechanism of toxicity with other substances. Consequently, section 408(b)(2)(D)(v) does not apply.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Children's Safety Factor

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF).

In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Based on the information discussed in Unit III., EPA concludes that there are no threshold effects of concern to infants, children, or adults from exposure to the spinach defensin proteins 2, 7, and 8. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

B. Determination of Safety

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *C. tristeza* virus expressing spinach defensin proteins 2, 7, and 8. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on a lack of toxicity and allergenicity of the *C. tristeza* virus expressing spinach defensin proteins 2, 7, and 8.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation based on the lack of any toxicity or allergenicity of the *C. tristeza* virus expressing spinach defensin proteins 2, 7, and 8.

B. Response to Comments

Five non-governmental organizations opposed the issuance of the temporary exemption from the requirement for a tolerance in order to prevent the issuance of the related experimental use permit (EUP). Their objections on the EUP focused on concerns about the potential for environmental impacts as a result of the pesticide spreading beyond the field trial boundaries of the EUP. They did not raise any concern about the human health or safety of the pesticide itself. Without more, the commenters have not provided a basis on which the Agency should reconsider issuing this temporary tolerance exemption. The FFDCA requires EPA to make a safety finding about the pesticide; the statutory scope of that review is focused on human health, not environmental, impacts.

VIII. Conclusion

Therefore, a temporary exemption is established for residues of *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 alone or in various combinations on commodities in the fruit, citrus, group 10–10, when used in accordance with the Experimental Use Permit No. 88232–EUP–2. Because Experimental Use Permit No. 88232–EUP–2 will expire on August 31, 2019, EPA is similarly limiting the term of this exemption; this temporary exemption from the requirement of a tolerance will expire on August 31, 2020.

IX. Reference

1. U.S. Environmental Protection Agency. Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting Held December 6–8, 2005 on Plant-Incorporated Protectants Based on Virus Coat Protein Genes: Science Issues Associated with the Proposed Rule, *http://www.regulations.gov.* Docket No. EPA–HQ–OPP–2005–0249–12.

X. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 10, 2016.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1337 to subpart D to read as follows:

§ 180.1337 Citrus tristeza virus expressing spinach defensin proteins 2, 7, and 8; exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Citrus tristeza* virus expressing spinach defensin proteins 2, 7, and 8 (either alone or in combinations with each other) in or on the commodities listed in fruit, citrus group 10–10, when used in accordance with the terms of Experimental Use Permit No. 88232–EUP–2. This temporary exemption from the requirement of a tolerance expires on August 31, 2020.

[FR Doc. 2016–20547 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2015–0674; FRL–9951–51–Region 3]

Maryland: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Maryland has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Maryland's revisions through this direct final rule. In the "Proposed Rules" section of today's **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these revisions. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Maryland's revisions to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing today's direct final rule before it takes effect and the separate document in today's "Proposed Rules" section of this **Federal Register** will serve as the proposal to authorize the revisions.

DATES: This final authorization will become effective on October 31, 2016, unless EPA receives adverse written comments by September 29, 2016. If EPA receives any such comments, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2015–0674, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: pratt.stacie@epa.gov.*
3. *Mail:* Stacie Pratt, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Maryland's application from 8:00 a.m. to 4:30 p.m., Monday through Friday at the following locations: Maryland Department of the Environment, Land Management Administration, Resource Management Program, 1800 Washington Blvd., Suite 610, Baltimore, Maryland 21230–1719, Phone number: (410) 537–3314, attn: Ed Hammerberg; and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814– 5254.

Instructions: Direct your comments to Docket ID No. EPA–R03–RCRA–2015–0674. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The Federal regulations Web site, *http://www.regulations.gov,* is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*).

Docket: All documents in the docket are listed in the *http://www.regulation.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy.

FOR FURTHER INFORMATION CONTACT: Stacie Pratt, Mailcode 3L50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029; Phone: 215–814–5173.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions has EPA made in this rule?

On July 31, 2015, Maryland submitted a final program revision application (with subsequent corrections) seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated between January 14, 1985 and August 5, 2005. EPA concludes that Maryland's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C 6926(b), and 40 CFR part 271. Therefore, EPA grants Maryland final authorization to operate its hazardous waste program with the revisions described in its authorization application, and as outlined below in Section G of this document.

Maryland has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Maryland has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

This action serves to authorize revisions to Maryland's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Maryland is being authorized by today's action are already effective and are not changed by today's action. Maryland has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Maryland has taken its own actions.

D. Why wasn't there a proposed rule before today's rule?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of today's **Federal Register** that serves as the proposal to authorize these State program revisions. EPA did not publish a proposal before today's rule because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, EPA will withdraw today's direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of Maryland's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular revision to the State's hazardous waste program, EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Maryland previously been authorized for?

Maryland initially received final authorization effective February 11, 1985 (50 FR 3511; January 25, 1985) to implement its base hazardous waste management program. EPA granted authorization for revisions to Maryland's regulatory program on June 1, 2001, effective July 31, 2001 (66 FR 29712), and on July 26, 2004, effective September 24, 2004 (69 FR 44463).

G. What revisions is EPA authorizing with this action?

On July 31 2015, Maryland submitted a final program revision application (with subsequent corrections), seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Maryland's revision application includes various regulations that are equivalent to, and no less stringent than, selected Federal final hazardous waste rules, as published in the **Federal Register** between January 14, 1985 and August 5, 2005.

EPA now makes a direct final regisule, subject to receipt of written comments that oppose this action, that Maryland's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Maryland final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Maryland seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists the Maryland analogs that are being recognized as no less stringent than the analogous Federal requirements. Note that the Federal rules listed in Table 1 may include revisions related to the land disposal restriction (LDR) regulations. Maryland has not adopted, and is not seeking authorization for, the LDR regulations.

Maryland's regulatory references are to Title 26, Subtitle 13 of the Code of Maryland Regulations (COMAR), Chapters 01 through 10, as amended effective November 12, 2010. The State's statutory authority for its hazardous waste program is based on the Environment Article of the Annotated Code of Maryland (2013 Replacement Volume and 2014 Supplement), and the State Government Article of the Annotated Code of Maryland (2014 Replacement Volume). Maryland's application also includes a revised Program Description, which provides a description of the hazardous waste regulatory program in Maryland.

TABLE 1—MARYLAND'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement (revision checklists[1])	Federal Register	Analogous Maryland authority
HSWA Cluster I		
Dioxin Waste Listing and Management Standards, Revision Checklist 14.	50 FR 1978, 1/14/85	COMAR 26.13.02.05C(1)*, .05C(2)* .05C(5)*, .05C(6)(a), .05C(7)*, .07B(1) introductory paragraph*, .07B(3) introductory paragraph*, .15E introductory paragraph, .15E(1), .16, .19G, .22 Table 1, .22 Table 3, .23, .24;

TABLE 1—MARYLAND'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (revision checklists[1])	Federal Register	Analogous Maryland authority
		26.13.05.09H(4) introductory paragraph, .09H(5), .11K(1), .11K(2), .12J(1), .12J(2), .13N(1), .13N(2), .14P(1), .14P(2), .16F(1)(a) and 16F(1)(b); 26.13.06.01A(6), .23C, .24B(1); 26.13.07.02D(21), .02–3B(9), .02–4B(17), .02–5B(10), .02–7B(7), .02–8B(8). (More stringent provisions: 26.13.06.01A(6), .23C, .24B(1)). *Certain portions of the regulations are considered broader in scope; see discussion in Section H.1(a).
Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, Revision Checklist 17E.	50 FR 28702, 7/15/85	COMAR 26.13.05.02–1F and 26.13.06.02G.
Ground-Water Monitoring, Revision Checklist 17I	50 FR 28702, 7/15/85	COMAR 26.13.05.06A(3), .11G(2)(b). (More stringent provisions 26.13.05.11(G)(4), .12.E(4)(b), .14C(2)(b)).
Pre-construction Ban, Revision Checklist 17M	50 FR 28702, 7/15/85	COMAR 26.13.07.01B. (More stringent provisions: 26.13.07.01B, no State analog to 40 CFR 270.10(f)(3)).
Permit Life, Revision Checklist 17N	50 FR 28702, 7/15/85	COMAR 26.13.07.06.A and .06C.
Research and Development Permits, Revision Checklist 17Q.	50 FR 28702, 7/15/85	COMAR 26.13.07.02A and .19.
Exposure Information, Revision Checklist 17S	50 FR 28702, 7/15/85	COMAR 26.13.07.02C and .02D(37).
	HSWA Cluster II	
Permit Modification, Revision Checklist 44D	52 FR 45788, 12/1/87	COMAR 26.13.07.11B(3).
Permit Conditions to Protect Human Health and the Environment, Revision Checklist 44F.	52 FR 45788, 12/1/87	COMAR 26.13.07.02D(36).
Land Disposal Restrictions for Third Third Scheduled Wastes, Revision Checklist 78[2].	55 FR 22520, 6/1/90	COMAR 26.13.02.10B, .11B, .12B, .13B, .14B, .16A/Table, .19C, .23/Table.
(This checklist is HSWA Cluster II, with the exception of clarifying amendment to 261.33(c) which is in non-HSWA Cluster VI.)		
	RCRA Cluster III	
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris; Containment Buildings, Revision Checklist 109[2].	57 FR 37194, 8/18/92	COMAR 26.13.01.03.B(9–1), .03.B(53), and .03.B(63); 26.13.02.03.A(2)(c), .03.C–1(3) introductory paragraph through (3)(d), .03.C–1(3)(e)–(g), .03E introductory paragraph, .03E(1), and .03(E)(2); 26.13.03.05.E(1)(b)(iii), 05.E(1)(b)(iv), .05.E(1)(e), .05.E(1)(l)(i), .05.E(1)(l)(iii), .05.E(1)(m), .05.E(1)(n), .05.E(4); 26.13.05.07.A(2)(a)–(d), .07.B(3), .07.C(1)(b), .08.A, .18, .18–1, .18–2(A), .18–2(B), .18–2(C)(1)–(2), .18–2(D)–(F), .18–3; 26.13.06.12A(1)–(4), .07B(3), .08E(10), .16A, .29; 26.13.07.13–2A(12) and .23.C(3)(f). (More stringent provisions: 26.13.07.13–2A(12); no State analogs to 40 CFR 270.42(e)(iii)(B) and 270.42 Appendix I Item I(6).)
Toxicity Characteristic Amendment, Revision Checklist 117B.	57 FR 23062, 6/1/92	COMAR 26.13.02.03A(2)(a) and .03A–1.
	RCRA Cluster IV	
Revision of Conditional Exemption for Small Scale Treatability Studies, Revision Checklist 129.	59 FR 8362, 2/18/94	COMAR 26.13.02.04–4B(1)–(2), .04–4C, .04–4D, .04–4E, .04–5A(3)–(5), and .04–5A(11)(b).
	RCRA Cluster V	
Recovered Oil Exclusion, Revision Checklist 135[3]	59 FR 38536, 7/28/94	COMAR 26.13.02.03C–1(2), .04A(15) and (16), .06A–1(1)(c) and Agency Note, and .06A–1(2)(c)–(e).
Removal of the Conditional Exemption for Certain Slag Residues, Revision Checklist 136[2].	59 FR 43496, 8/24/94	COMAR 26.13.10.01A(4).
Carbamate Production Identification and Listing of Hazardous Waste, Revision Checklist 140.	60 FR 7824, 2/9/95; as amended at 60 FR 19165, 4/17/95, and at 60 FR 25619, 5/12/95.	COMAR 26.13.02.03A–2(5)–(7), .03C–1(4), .17, .19E, .19G, .23 and .24.

TABLE 1—MARYLAND'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (revision checklists [1])	Federal Register	Analogous Maryland authority
RCRA Cluster VI		
RCRA Expanded Public Participation, Revision Checklist 148[3].	60 FR 63417, 12/11/95	COMAR 26.13.01.03B(23–1); 26.13.07.02D(39), .04N, .14A(5), .17B(7)–(12), .17D, .19–1, .19–2A, .19–2B, .20–2A(5)–(6), .20–2D(4), .20–2E(1)(d)–(f), .20–2F(1)(a), .20F(1)(d), .20F(1)(h), .20–2F(3) and .20–3. (More Stringent Provisions: COMAR 26.13.07.17B(12)(c), .20–2A(5)–(6), .20–2F(3), .20–3.)
Amendments to the Definition of Solid Waste; Amendment II, Revision Checklist 150.	61 FR 13103, 3/26/96	COMAR 26.13.02.04A(15)–(16).
RCRA Cluster VII		
Military Munitions Rule, Revision Checklist 156	62 FR 6622, 2/12/97	COMAR 26.13.01.03B(2–1), .03B(5–1), .03B(22–2)–.03B(22–4), .03B(37–1), .03B(51–1), .03B(51–2), .03B(51–3), .03B(69–1), .03B(87–2); 26.13.02.02A(2)(c)–(d); 26.13.03.01J, .04A(6); 26.13.04.01A(4)–(5); 26.13.05.01A(2)(d)–(e), .01A(3)(h)(iv), .01D(5)–(6), .05A(2), .21; 26.13.06.01A(2)(d)–(e), .01A(4)(h)(iv), .01A(5)(b)–(c), .05A, .28; 26.13.07.01A, .13–1C; 26.13.10.27*, .10.28B–D, .10.29–.31. *Certain portions of the regulations are considered broader in scope; see discussion in Section H.1(b).
Land Disposal Restrictions Phase IV, Revision Checklist 157[2].	62 FR 25998, 5/12/97	COMAR 26.13.02.01C(3)(b)–(e), .02G/Table 1, .04A(11), .04A(12), .06A–1(2)(b).
Conformance With the Carbamate Vacatur, Revision Checklist 159[2].	62 FR 32974, 6/17/97	COMAR 26.13.02.17A/Table, .19G, .23/Table, and .24.
RCRA Cluster VIII		
Kraft Mill Steam Stripper Condensate Exclusion, Revision Checklist 164.	63 FR 18504, 4/15/98	COMAR 26.13.02.04A(14).
RCRA Cluster IX		
Petroleum Refining Process Wastes, Revision Checklist 169[2][3].	63 FR 42110, 8/6/98	COMAR 26.13.02.03A–2(3), .03C–1(2), .03C–1(5), .04A(15)–(18), .06A–1(2)(e), .16A, .17A/Table, and .23/Table.
Petroleum Refining Process Wastes—Leachate Exemption, Revision Checklist 178.	64 FR 6806, 2/11/99	COMAR 26.13.02.04–1A(16) introductory language and (a)–(e) and .02.04–1A–1.
RCRA Cluster X		
Land Disposal Restrictions Phase IV—Technical Corrections, Revision Checklist 183[2].	64 FR 56469, 10/20/99	COMAR 26.13.02.17A/Table.
Petroleum Refining Process Wastes Clarification, Revision Checklist 187[2].	65 FR 36365, 6/8/00	COMAR 26.13.02.16A/Table.
RCRA Cluster XI		
Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, Revision Checklist 189[2].	65 FR 67068, 11/8/00	COMAR 26.13.02.17A/Table, .23/Table, and .24.
Mixture and Derived—From Rules Revisions, Revision Checklist 192A.	66 FR 27266, 5/16/01	COMAR 26.13.02.03A(2)(c), .03A(2)(d), .03A–2, .03C(2)(a), .03F introductory language and (1)–(2). (More Stringent Provisions: COMAR 26.13.02.03C(2)(a).)
RCRA Cluster XII		
Mixture and Derived—From Rules Revision II, Revision Checklist 194.	66 FR 50332, 10/3/01	COMAR 26.13.02.03A(2)(d), .03A–2, and .03F(3).
Inorganic Chemical Manufacturing Wastes Identification and Listing, Revision Checklist 195[2]	66 FR 58258, 11/20/01	COMAR 26.13.02.04–1A(16)(a)–(e), .04–1A–1, .17A/Table, and .23 Table.

TABLE 1—MARYLAND'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement (revision checklists[1])	**Federal Register**	Analogous Maryland authority
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use With MGP Waste, Revision Checklist 199.	67 FR 11251, 3/13/02	COMAR 26.13.02.02C(3) and .14A.
	RCRA Cluster XV	
Uniform Hazardous Waste Manifest Rule, Revision Checklist 207.	70 FR 10776, 3/4/05; as amended 70 FR 35034, 6/16/05.	COMAR 26.13.01.03B(12), .03B(50)–(51), .03B(55–1–1); 26.13.02.07B(1)(b)(i)–(ii); 26.13.03.04(A)(1),.04B(1)(b), .04B(1)(c)(i)–(ii), .04B(1)(d)–(e), .04(B)(2)(a)(ii), .04B(2)(b)–(d), .04B(3)–(6), .04C, .04D(2)(e), .04F(2)(a)–(b), .05C(2), .05D, .05E(4), .07–2A(3) and (5), .07–3B(3)–(4), .07–3C; 26.13.04.02A(1), .02A(7), .02B(2)–(4); 26.13.05.05A(2)–(3), .05B(1)(a)–(d) and (f)–(g), .05B(2)(d), .05B(5), .05C, .05G; 26.13.06.05A.
	RCRA Cluster XVI	
Universal Waste Rule: Specific Provisions for Mercury Containing Equipment, Revision Checklist 209[2].	70 FR 45508, 8/5/2005	26.13.01.03B(2–2), .03B(46–1), .03B(51–2), .03B(72–2), .03B(89–1); 26.13.02.07–1B(3); 26.13.05.01A(3); 26.13.06.01A(4)(j)(iii); 26.13.07.01A; 26.13.10.06B(3); 26.13.10.09, .14, .17A(2)(d), .17A(3), .19C(1)(a)(iv)–(v), .20C, and .21A.

---

[1] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/osw/laws-regs/state/index.htm.*

[2] Maryland is not seeking authorization for the provisions related to the Land Disposal Restriction (LDR) regulations because Maryland has not adopted the LDR regulations.

[3] Maryland is not seeking authorization for the provisions related to the Boiler and Industrial Furnace (BIF) regulations because Maryland has not adopted these regulations.

2. State-Initiated Changes

Maryland's program revision application includes State-initiated changes that are not directly related to any of the Revision Checklists in Table 1. Each State-initiated change is related to one of the following: (1) The adoption of a provision that makes internal clarification and conforming changes to the State's regulations, (2) adoption of a provision that makes the State's regulations, which had been more stringent, now equivalent to the Federal hazardous waste regulations, or (3) correction of typographical errors. EPA has evaluated the changes and has determined that the State's regulations remain consistent with, and are no less stringent than, the corresponding Federal regulations. EPA grants Maryland final authorization for the State provisions listed in Table 2. These requirements are analogous to the indicated Federal RCRA regulations found at relevant or applicable 40 CFR sections as of July 1, 2005.

TABLE 2—EQUIVALENT STATE-INITIATED CHANGES

State citation (COMAR)	Federal RCRA citation (40 CFR)
26.13.02.05D(2)(c)(iv)	No direct Federal analog. Related to 40 CFR 261.5(g)(3).
26.13.02.11A(3), A(4), and C; 26.13.02.11–1	40 CFR 261.21(a)(3); No Federal analog to 26.13.02.11–1.
26.13.02.13A(8) and C	40 CFR 261.23(a)(8).
26.13.03.07–5A(2)	262.58(a).
26.13.06.01A(4)(k)	265.1(c)(13).
26.13.07.20–2F(3)(e)	No Federal analog in 40 CFR 124.32.
26.13.10.03A	266.70(a).
26.13.10.04C	266.80.
26.13.10.26	No Federal analog in 40 CFR 273.

H. Where are the revised Maryland rules different from the federal rules?

1. Maryland Requirements That Are Broader in Scope

The Maryland hazardous waste program contains certain provisions that are broader in scope than the Federal program. These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Maryland law. Examples of broader in scope provisions of Maryland's program include, but are not limited to, the following:

(a) COMAR 26.13.02.05C(1) and (2), .05.C(5), .05C(6)(b), .05C(7), .07B(1) introductory paragraph, .07B(3) introductory paragraph, and .15E(2) (part of the State's analogs to 40 CFR 261.5(e), 261.7(b), and 261.30(d)) contain references to polychlorinated biphenyls (PCBs) and to State-only wastes listed at COMAR 26.13.02.17 (K991 through K999; military wastes), COMAR 26.13.02.18 (MD01: a type of Filter cake and chemical sludge) and COMAR 26.13.02.19.F (M001: PCBs above 500 parts per million (ppm), which is regulated under the Toxic Substances and Control Act (TSCA)). The portions of these provisions that are associated with the State-only wastes and the PCBs above 500 ppm go beyond the scope of the Federal program because PCBs and the State-only wastes are not Federal hazardous wastes and, thus, are not part of the program being authorized by today's action.

(b) At COMAR 26.13.10.27B(3)(a)–(b), Maryland has included as solid wastes those unused military munitions that have been abandoned by being treated ((3)(a)(v)) or removed from storage and treated ((3)(b)(iii)). The Federal analogs at 40 CFR 266.202(b)(1) and (2) do not include treatment alone as a requirement for becoming a solid waste. Instead, treatment is used in the context of the step prior to disposal (see 56 FR 6626). As such, Maryland's requirements at COMAR 26.13.10.27B(3)(a)(v) and 26.13.10.27B(3)(b)(iii) are broader in scope than the Federal program, where an unused munition that is subject to chemical treatment without disposal would not be regulated as a solid waste.

(c) Maryland has not adopted the mixed waste rule (66 FR 27218). Therefore, Maryland does not have an analog to 40 CFR 261.3(h), which exempts eligible radioactive mixed waste from regulation as a hazardous waste. As a result, Maryland's regulations is broader in scope than the Federal program because eligible radioactive mixed wastes are not Federal hazardous wastes and, thus, are not part of the program being authorized by today's action.

(d) Maryland has not adopted the vacatur of mineral processing spent materials being reclaimed as solid wastes. Therefore, Maryland does not have an analog to 40 CFR 261.4(a)(17). By regulating these materials, Maryland's program is broader in scope than the Federal program because these materials are not Federal solid wastes and, thus, are not part of the program being authorized by today's action.

2. Maryland Requirements That Are More Stringent Than the Federal Program

Maryland's hazardous waste program contains several provisions that are more stringent than the RCRA program. The more stringent provisions are part of a Federally-authorized program and are, therefore, Federally-enforceable. The specific more stringent provisions are also noted in Table 1 and in Maryland's authorization application. They include, but are not limited to, the following:

(a) Maryland has not adopted analogs to the Federal provisions at 40 CFR 265.1(d)(1)(iv)–(v), which allow dioxin wastes to be burned in certain incinerators and facilities that thermally treat the waste in other devices. Maryland has replaced these provisions with a provision at COMAR 26.13.06.01.A(6)(d) that allows dioxin wastes to be managed at a permitted facility, thus making Maryland's regulations more stringent.

(b) The Federal regulations at 40 CFR 265.352 and 265.383 allow owners and operators of incinerators and thermal treatment devices who have received the required certification to burn EPA hazardous wastes F020, F021, F022, F023, F026, or F027. However, Maryland's regulations at COMAR 26.13.06.23C and .24.B(1) prohibit the burning of such wastes, thus making Maryland's regulations more stringent.

(c) Maryland did not adopt an analog to the Federal provision at 40 CFR 270.10(f)(3), which was removed by the July 15, 1985 rule (50 FR 28702), nor has Maryland adopted the optional provision introduced by the July 15, 1985 rule at 40 CFR 270.10(f)(3). As a result, COMAR 26.13.07.01B, which is Maryland's analog to 40 CFR 270.10(f)(1), does not include the phrase analogous to "except as provided in paragraph (f)(3) of this section." The Federal provision at 40 CFR 270.10(f)(3) allows a person to construct a facility for the incineration of PCBs without a RCRA permit if an approval has been issued under TSCA. Without this exemption, Maryland's regulations are more stringent.

(d) Certain provisions of Maryland's regulations pertaining to containment buildings are considered more stringent than the Federal requirements. These provisions include:

- Maryland has not adopted an analog to 40 CFR 270.42(e), which allows the Director to grant a permittee a temporary authorization without prior public notice and comment. Maryland's regulations are considered more stringent because it does not provide for temporary authorizations.
- The Federal regulations at 40 CFR 270.42 Appendix I classify the conversion of an enclosed waste pile to a containment building as a Class 2 modification. Unlike the Federal regulations, which have three classes of permit modifications, Maryland only lists minor modifications in COMAR 26.13.07.13–2. Any modification not listed in COMAR 26.13.07.13–2 is a major modification in Maryland. Maryland's regulations are more stringent because it treats this Class 2 modification in the Federal regulations as a major modification.
- Maryland has adopted the Federal Class 1 modifications of 40 CFR 270.42 Appendix I as part of its minor modifications. Maryland's regulations are more stringent because it treats the Federal Class 2 and 3 permit modifications for containment buildings as major modifications.

(e) Maryland has several additional requirements for public participation in the hazardous waste program permitting process, which make the State's regulations more stringent. The requirements include, but are not limited to, the following:

- Maryland's regulations at COMAR 26.13.07.17B(12)(c) provides a specific number of days (30) rather than requiring "a reasonable period of time," as found in the Federal regulations. Therefore, Maryland's regulations are considered more stringent.
- Maryland's requirements at COMAR 26.13.07.20–2A(5) and (6) are more stringent because public notice must also be given of receipt of an application for a permit modification and of receipt of an application for post-closure activities.
- Maryland's regulations at COMAR 26.13.07.20–2F(3)(e) require that the public notice include information on how to request that an informational meeting be held. This requirement is an additional requirement making Maryland's regulations more stringent.

- Maryland's regulations at COMAR 26.13.07.20–3 require the Director to hold informational meetings under specific conditions, which is considered more stringent than the Federal regulations.

(f) Maryland has not adopted the mixed waste rule (66 FR 27218). Therefore, Maryland's regulation at COMAR 26.13.02.03C(2) is more stringent than the Federal requirements because the Maryland regulation does not include all of the exceptions found in the analogous Federal regulation at 40 CFR 261.3(c)(2)(i).

3. Federal Requirements for which Maryland is not Seeking Authorization

Maryland is not seeking authorization for the land disposal restriction (40 CFR 268), used oil standards (40 CFR 279), boiler and industrial furnace standards (40 CFR 266, Subpart H), air emission standards (40 CFR 264 and 265, Subparts AA, BB, and CC), or HSWA corrective action requirements.

I. Who handles permits after the authorization takes effect?

After this authorization revision, Maryland will issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time, as EPA formally transfers responsibility for a permit to Maryland and EPA terminates its permit, EPA and Maryland agree to coordinate the administration of such permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Maryland is not yet authorized.

J. How does this action affect Indian country (18 U.S.C. 115) in Maryland?

Maryland is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Maryland.

K. What is codification and is EPA codifying Maryland's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this action by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart V, for this authorization of Maryland's program revisions until a later date.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements pursuant to RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Maryland.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not concern environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, *et seq.*) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than, existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective October 31, 2016.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, EPA Region III.

[FR Doc. 2016–20849 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2016–0029]

RIN 0750–AJ04

Defense Federal Acquisition Regulation Supplement: Request for Audit Services in France, Germany, the Netherlands, or the United Kingdom (DFARS Case 2016–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify the countries with which DoD has audit agreements.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending DFARS 225.872–6 to specify the qualifying countries that have audit agreements with the United States (*i.e.*, France, Germany, the Netherlands, and the United Kingdom).

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled ''Publication of Proposed Regulations.'' Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only specifies the qualifying countries that have audit agreements with the United States, rather than requiring each contracting officer to contact the Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), to determine whether a qualifying country has such an audit agreement. These regulations affect only the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 225.872–6 to read as follows:

225.872–6 Request for audit services.

Handle requests for audit services in France, Germany, the Netherlands, or the United Kingdom in accordance with PGI 215.404–2(c), but follow the additional procedures at PGI 225.872–6.

[FR Doc. 2016–20476 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

[Docket DARS–2016–0002]

RIN 0750–AI86

Defense Federal Acquisition Regulation Supplement: Costs Related to Counterfeit Electronic Parts (DFARS Case 2016–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the

National Defense Authorization Act for Fiscal Year 2016 that amends the allowability of costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

DATES: Effective August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 17055 on March 25, 2016, to implement section 885(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 818(c)(2)(B) of the NDAA for FY 2012, as amended by section 885(a), provides that the costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are not allowable unless—

- The covered contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that had been reviewed and approved by DoD;
- The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with the Federal Acquisition Regulation (FAR) part 45, or were obtained by the contractor in accordance with the regulations described in paragraph (c)(3) of section 818 of the NDAA for FY 2012, as amended;
- The contractor discovers the counterfeit electronic parts or suspect counterfeit electronic parts and provides timely (*i.e.,* within 60 days after the contractor becomes aware) notice to the Government, pursuant to section 818(c)(4).

Section 885 is the third in a series of amendments to section 818(c) of the NDAA for FY 2012, summarized as follows:

FY 2012 Pub. L. 112–81	FY 2013	FY 2015	FY 2016
Section 818	Sec. 833 amended	Sec. 817 amended	Sec. 885 amended
(a) Assessment of DoD Policies and Systems.			
(b) Actions Following Assessment.			
(c) Regulations	(c)(2)(B)	(c)(3)	(c)(2)(B) (c)(3)(D)
* * * * *		*	*
(e) Improvement of Contractor Systems for Detection and Avoidance of Counterfeit Electronic Parts.			
(f) Definitions.			
* * * * *		*	*

Section 803 of the NDAA for FY 2014, entitled Identification and Replacement of Obsolete Electronic Parts, did not modify section 818 of the NDAA for FY 2012 and is not directly related to the detection and avoidance of counterfeit electronic parts.

DoD has processed several DFARS cases to implement section 818 and its subsequent amendments as follows:

DFARS case	Title	Implements	Published
2012–D055	Detection and Avoidance of Counterfeit Electronic Parts.	Sec. 818 (b)(1), (c)(partial), (e), and (f); as amended by sec. 833 of NDAA for FY 2013.	Final rule published 5/6/2014.
2014–D005	Detection and Avoidance of Counterfeit Electronic Parts—Further Implementation.	Sec. 818 (c)(3); as amended by sec. 817 of NDAA for FY 2015, except sec. 818 (c)(3)(C).	Final rule published 8/2/2016.
2015–D020	DoD Use of Trusted Suppliers for Electronic Parts.	Sec. 818(c)(3)(C)	Not yet published.
2016–D010	Costs Related to Counterfeit Electronic Parts.	Sec. 818(c)(2)(B), as amended by sec 885(a) of NDAA for FY 2016.	This final rule.
2016–D013	Amendments Related to Sources of Electronic Parts.	Sec. 818(c)(3)(D)(ii), as amended by sec. 885(b) of NDAA for FY 2016.	Proposed rule published 8/2/2016.

In addition, there are two related FAR cases:

- FAR Case 2012–032, Higher-Level Contract Quality Requirements, does not specifically implement section 818 of the NDAA for FY 2012, but the performance of higher-level quality assurance for critical items does assist in the detection and avoidance of counterfeit electronic parts (final rule published November 25, 2014, effective December 26, 2014).
- FAR Case 2013–002, Expanded Reporting of Nonconforming Items, expands beyond the requirements of section 818(c)(4), applying Governmentwide (not just DoD) to certain parts with a major or critical nonconformance (not just counterfeit electronic parts) (proposed rule published June 10, 2014).

Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Changes From the Proposed Rule in Response to Public Comments

The final rule includes the following changes from the proposed rule at DFARS 231.205–71(b):

1. (b)(1)—Replaced ''counterfeit parts'' with ''counterfeit electronic parts'' (see section II.B.5. of this preamble).
2. (b)(3)(i)—Replaced ''Discovers'' with ''Becomes aware of'' and added clarifying language (see section II.B.3.c. of this preamble).
3. (b)(3)(ii)—Added the requirement to provide notice of counterfeit parts to Government Industry Exchange Program (GIDEP), with some exceptions (see section II.B.3.d. of this preamble).

B. Analysis of Public Comments

1. Support for the Statute

Comment: One respondent stated that industry wholeheartedly supports the change to the statute to expand the conditional safe harbor from strict liability for costs to remedy damage resulting from the discovery of counterfeit electronic parts and suspect counterfeit electronic parts in end products delivered to DoD.

Response: Noted.

2. Number and Timing of Cases

Both respondents commented on the number and timing of cases in process to implement section 818 of the NDAA for FY 2012, as amended.

Comment: One respondent applauded the deliberate and thoughtful approach by DoD to proceed with great care over a period of years to ensure the requirements are implemented with minimal disruption to the DoD supply chain.

Response: Noted.

Comment: One respondent recommended comprehensive, rather than ''piecemeal'' regulations. The respondent was concerned that this case should be considered and resolved together with DFARS cases 2014–D005 and 2016–D013 in a proposed rule with opportunity for notice and comment on the entire rule. The other respondent requested that DoD align the open cases to create a safe harbor that is efficient and complementary to the goal of building a risk-based framework to reduce the risk of counterfeit electronic parts from entering the DoD supply chain.

Response: Sometimes the best way to achieve a goal is to divide the task into segments that can be accomplished sequentially. Furthermore, the legislation to be implemented was enacted in four separate statutes over a period of 4 years, necessitating additional cases to implement the statutory amendments. DFARS Case 2014–D005 had already been published as a proposed rule on September 21, 2015, prior to enactment of the NDAA for FY 2016 on November 25, 2016. DoD carefully considered whether the new amendments should be incorporated into the existing rule, or whether DFARS Case 2014–D005 should be finalized and followed by the two cases to implement section 885(a) and (b) of the NDAA for FY 2016.

- Because both DFARS cases 2016–D010 and 2016–D013 required publication for public comment, they could not be incorporated in a final rule under 2014–D005.
- At the time of public comment on this rule, the respondents were able to view the proposed rule under DFARS Case 2014–D005. If the two new cases were published as proposed rules, separately or in combination with DFARS Case 2014–D005, the respondents would still not know what the final rule under 2014–D005 would be, at the time of commenting on the new aspects of the case. Furthermore, implementation of DFARS Case 2014–D005 would be delayed by at least a year if it were not finalized prior to implementation of the new requirements of section 885 of the NDAA for FY 2016.
- DoD considered it important to reduce supply chain risk as soon as possible by proceeding to finalize DFARS Case 2014–D005. DFARS Case 2014–D005 further implements section 818(c)(3)(A), (B), and (D) to provide detailed regulations to all DoD contractors and subcontractors that provide electronic parts to the Government, either as end items or components (not just cost accounting standards (CAS)-covered contractors and their subcontractors). If each phase of implementation of the rule were delayed until every new amendment was ready to be incorporated, DoD would still have nothing in place to protect against the hazards of counterfeit electronic parts in the DoD supply chain.
- DFARS Case 2016–D013 could not be published as a proposed rule until DFARS case 2014–D005 was finalized (81 FR 50635 on August 2, 2016), in order to provide the baseline for the required change.
- There was interest in expediting this DFARS Case 2016–D010, because it impacts cost allowability, and the text of this case is not overlapping with the text of DFARS Case 2014–D005. Therefore, this case was published as a proposed rule prior to publication of the final rule under DFARS Case 2014–D005.
- Although the respondents did not have the opportunity to see the final rule under DFARS Case 2014–D005 prior to providing comments on this case, DoD considered all other related cases when finalizing DFARS Case 2014–D005, proposing DFARS Case 2016–D013, and now finalizing this case.

3. Contractor Requirements Related to Allowability of Costs (Safe Harbor)

a. Have an Approved Operational System

Comment: One respondent stated that DFARS Case 2014–D005 addresses precisely what would be considered an operational system, who provides the needed approval, and how approval will be obtained.

Response: DFARS Case 2012–D055 (finalized May 6, 2014) added the regulations on—

- The contractors' purchasing system reviews (DFARS 244.305), which also cover review of the adequacy of the contractor's counterfeit electronic part detection and avoidance system; and
- The contractors' counterfeit electronic part detection and avoidance system (DFARS 246.870 and the clause at 252.246–7007). DFARS Case 2014–D005 (finalized August 2, 2016) did not make any changes to the coverage at DFARS 244.305, so did not impact who approves the operational system and how the approval is obtained. DFARS Case 2014–D005 did implement section 818(c)(3)(D) at DFARS 246.870–2(a), authorizing contractors and subcontractors to identify and use additional trusted suppliers (contractor-approved suppliers) in some circumstances. Therefore, DFARS Case 2014–D005 amended one of the 12 system criteria at DFARS 246.870 (*i.e.,* the criterion relating to use of suppliers) by providing a cross reference to the more detailed coverage on sources of electronic parts now provided at DFARS 246.870–2(a). In addition, the clause at DFARS 252.246–7007 included some additional definitions of terms relating to sources of electronic parts, and cross-referenced to the new clause at DFARS 252.246–7008 for consistency in the requirements relating to traceability and sources of electronic parts between CAS-covered contractors with operational systems and all other DoD contractors and subcontractor supplying electronic parts or items containing electronic parts.

Comment: One respondent noted that, while the rules on the elements of the Detection and Avoidance System and the Contractor Purchasing System have been finalized, both systems are dependent on the forthcoming rules on use of trusted suppliers (DFARS Case 2014–D005) and timely reporting (FAR Case 2013–002). The respondent was concerned that, when finalized, those rules may shape those policies and systems in ways not contemplated in this rulemaking. The respondent recommended that, where finalization of pending rules cause contractor or subcontractor systems to go out of alignment with any of the elements related to cost allowability herein, or their previously approved systems, DoD should adopt a "time-out" from compliance enforcement and allow contractors and subcontractors time to adjust those systems to any new or modified requirements impacting the safe harbor.

Response: DFARS Case 2014–D005, although not yet finalized at the time the comments were submitted, has now been in effect since August 2, 2016. The system criterion in paragraph (c)(6) of the clause at DFARS 252.246–7007 already requires reporting of counterfeit electronic parts and suspect counterfeit electronic parts to GIDEP. Paragraph (c)(11) also requires a process for screening GIDEP reports to avoid the purchase or use of counterfeit electronic parts. Although the FAR case may provide some additional details, the primary purpose of the FAR Case 2013–002 is to expand the requirement for GIDEP reporting to agencies other than DoD and to encompass parts other than electronic parts.

b. Obtain the Counterfeit Electronic Part in Accordance With Regulations

Comment: One respondent commented on the sourcing of electronic parts as a condition of cost allowability. Using the terminology of the proposed rule published under DFARS Case 2014–D005, the respondent noted three categories of suppliers each with its own unique set of qualities and conditions needed to meet the conditions for safe harbor.

The respondent was concerned about the meaning of the statement that the contractor is responsible for the authenticity of the parts, when buying from what is now termed a "contractor-approved" supplier. The respondent requested clarification and confirmation that the safe harbor condition based on acquiring parts in accordance with the DFARS 252.246–7008 clause will be broadly construed and available where contractors acquire from any of the categories of suppliers defined in the proposed version of the 252.246–7008 clause. The respondent was concerned that use of the terms "trustworthy" or "non-trusted" may be perceived to imply a standard inferior to that of "trusted supplier" and imply that use of such sources could prevent contractors from availing themselves of the safe harbor.

Response: It is correct that the statute and the final rule under DFARS Case 2014–D005 provided for a tiered approach for sources of electronic parts, although the final rule no longer uses the terms "trusted supplier," "trustworthy," or "non-trusted supplier."

- Category 1: Electronic parts that are in production or currently available in stock. The contractor shall obtain the parts from the original manufacturer, their authorized suppliers, or from suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.
- Category 2: Electronic parts that are not in production and not currently available in stock. The contractor shall obtain parts from suppliers identified by the contractor as contractor-approved suppliers, subject to certain conditions.
- Category 3: Electronic parts that are not in production and not available from any of the above sources; electronic parts from a subcontractor (other than the original manufacturer) that refuses to accept flowdown of 252.246–7008; or electronic parts that the contractor or subcontractor cannot confirm are new or that the electronic parts have not been comingled in supplier new production or stock with used, refurbished, reclaimed, or returned parts: The contractor may buy such electronic parts subject to certain conditions.

Section 818(c)(3)(C) imposes, as one of the conditions for contractor identification and use of contractor-approved suppliers (category 2), the requirement that the contractor or subcontractor "assume responsibility for the authenticity of parts provided by such suppliers as provided in paragraph (2)" (*i.e.*, section 818(c)(2), entitled "Contractor Responsibilities," which states that covered contractors that supply electronic parts or products that include electronic parts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts). The contractor assumes responsibility for the inspection, testing, and authentication in accordance with existing applicable standards, consistent with the requirements at DFARS 252.246–7008(c)(2) if the contractor cannot establish traceability from the original manufacturer for a specific electronic part.

The safe harbor provision of the statute at section 818(c)(2)(B), as amended, does not exclude applicability to electronic parts acquired from any of the categories of sources, as long as the contractor complies with all of the conditions associated with that category. The allowability of the costs of any counterfeit electronic parts and any rework or corrective action that may be required to remedy the use or inclusion of such parts must be based upon an analysis of the facts of the case, in accordance with section 818(c)(2)(B), as amended, DFARS 231.205–71, 246.870–2, and the associated clauses at DFARS 252.246–7007 and 252.246–7008.

Comment: One respondent recommended that "pending approval" be added to the definition of "trusted suppliers" and that contractor-designated trusted suppliers be assumed to be approved by the DoD officials until DoD notifies the designating contractor that the supplier is not approved. According to the respondent, this change to the regulations is necessary in order to prevent contractors and their suppliers from having costs relating to detection and remediation deemed unallowable because DoD officials have not conducted and completed the approval process for a contractor-approved supplier.

Response: DoD approval of contractor-approved suppliers is the subject of DFARS Case 2016–D013, Amendments Related to Sources of Electronic Part, which was published in the **Federal Register** as a proposed rule on August 2, 2016. Although that rule is not yet finalized, the proposed rule stated explicitly that the contractor may proceed with the acquisition of electronic parts from a contractor-approved supplier unless notified otherwise by DoD.

c. Discover the Counterfeit Electronic Part

Comment: One respondent recommended that broadening the concept of "discovers" would be consistent with the underlying policy concerns. The respondent recommended that the word "discover" should also include the situation where a contractor reviews a GIDEP alert about a suspect counterfeit electronic part and determines that it has incorporated the part in its DoD products and makes a report.

The respondent recommended replacing the word "discover" with "learns of and acts upon." According to the respondent, a narrow definition of "discovers" could result in a "first to discover" race that would thwart the timely sharing of information. The respondent feared that entities might not take sufficient care to gather and analyze all of the necessary information in their haste to be the first to report.

Response: Although the definition of "discover" frequently has the meaning of finding out something previously unknown, it also has the meaning of learning or becoming aware of something that the person making the "discovery" did not know about before. So, if a contractor became aware of a counterfeit electronic part on GIDEP and then took action with regard to its use of that part, this would fall within the meaning of "discover." It would be outside the scope of the meaning of "discover" if the Government discovered that the contractor was using counterfeit electronic parts, and notified the contractor of that fact. To make the meaning clearer, DoD has substituted the words "becomes aware" for the word "discovers," because this is the term used in section 818(c)(4), the paragraph to which section 818(c)(2)(B)(iii) refers, and is already used in DFARS 231.205–71(b)(3) and 252.246–7007(c)(6). The final rule adds clarifying language that the contractor may learn of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a GIDEP alert; or by other means.

d. Provide Timely Notice

Comment: One respondent recommended it would be beneficial to use a central point of contact contracting officer for reporting. The respondent also recommended clarification as to which level of contractor in the supply chain must provide notice to the Government.

Response: It is not feasible for the contractor to notify just one contracting officer, and expect that contracting officer to coordinate will all other contracting officers dealing with that contractor. It is the responsibility of the contractor to notify each contracting officer for each contract affected. However, the clause at DFARS 252.246–7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in compliance with section 818 paragraphs (c)(4) and (e), already requires that a counterfeit electronic part detection and avoidance system shall include risk-based policies and procedures that address reporting of counterfeit electronic parts and suspect counterfeit electronic parts. Reporting is required to the contracting officer and to GIDEP when the contractor becomes aware of, or has reason to suspect that, any electronic part or end item, component, part, or assembly containing electronic parts purchased by DoD, or purchased by a contractor for delivery to, or on behalf, of, DoD, contains counterfeit electronic parts or suspect counterfeit electronic parts. The notice required under this cost principle should be consistent with the statutory and regulatory required criterion for an approved system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts. Therefore, the final rule requires notice to the cognizant contracting officer(s) and GIDEP (with limited exceptions).

4. Process To Adjudicate Allowability

Comment: One respondent stated the need to establish an effective process for contracting officers to be able to fairly and promptly adjudicate claims related to the safe harbor conditions.

Response: The process for adjudicating the allowability of costs related to counterfeit electronic parts and suspect counterfeit electronic parts is no different than the process for adjudicating other potentially unallowable costs. If a contractor incurs costs related to counterfeit electronic parts or suspect counterfeit electronic parts, the contracting officer will check with the Defense Contract Management Agency to determine whether the contractor meets the criteria at DFARS 231.205–71(b). If the contracting officer determines that the costs are unallowable, the Defense Contract Audit Agency determines the amount of the unallowable costs.

5. Editorial Correction

Comment: One respondent noted that in proposed DFARS 231.205–71(b)(1) the word "electronic" was omitted in one place in the sentence "The contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts . . . ."

Response: The omission of the word "electronic" in this context was baseline DFARS, consistent with the original section 818 language. The statutory language was subsequently amended by section 885 of the NDAA for FY 2016 and has been corrected in the final rule.

C. Other Changes

The final rule—

- Specifies at DFARS 231.205–71(b)(2) the cites of the DFARS regulations with which the contractor must comply, as published in the **Federal Register** on August 2, 2016, under DFARS Case 2014–D005; and
- Replaces "notice" with "written notice" at DFARS 231.205–71(b)(3)(ii), for consistency with the statute.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule implements section 885(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). The objective of this rule is to amend the allowability of costs for counterfeit parts or suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts. Such costs may be allowable if the parts were obtained by the contractor/subcontractor in accordance with DFARS clause 252.246–7008, Sources of Electronic Parts, and timely notice is provided to the Government.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

DoD is unable to estimate the number of small entities that will be impacted by this rule. This rule will apply to all DoD prime and subcontractors with cost contracts. This rule will only impact cost allowability if the contractor or subcontractor has complied with

DFARS 246.870, but nevertheless acquired, used, or included counterfeit electronic parts or suspect counterfeit electronic parts in performance of a DoD contract or subcontract, and has learned of such parts and provided timely notification to the cognizant contracting officer(s) and the Government Industry Data Exchange Program (unless an exception applies).

There is no change to the projected reporting, recordkeeping, or other compliance requirements associated with the rule.

DoD has not identified any alternatives that are consistent with the stated objectives of the applicable statute. However, DoD notes that the impacts of this rule are expected to be beneficial, because it expands the allowability of costs for counterfeit parts or suspect counterfeit parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 231

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is amended as follows:

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 231.205–71 to read as follows:

231.205–71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.

(a) *Scope.* This section implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as modified by section 833, National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239), and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

(b) The costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303(b);

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101 or were obtained by the contractor in accordance with the clause at 252.246–7008, Sources of Electronic Parts; and

(3) The contractor—

(i) Becomes aware of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a Government Industry Data Exchange Program (GIDEP) alert; or by other means; and

(ii) Provides timely (*i.e.,* within 60 days after the contractor becomes aware) written notice to—

(A) The cognizant contracting officer(s); and

(B) GIDEP (unless the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States; or the counterfeit electronic part or suspect counterfeit electronic part is the subject of an on-going criminal investigation).

[FR Doc. 2016–20475 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2016–0001]

RIN 0750–AI83

Defense Federal Acquisition Regulation Supplement: Instructions for the Wide Area WorkFlow Reparable Receiving Report (DFARS Case 2016–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add instructions for utilizing the Wide Area WorkFlow Reparable Receiving Report.

DATES: Effective September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Ruckdaschel, telephone 571–372–6088.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 81 FR 17051 on March 25, 2016, to revise appendix F of the DFARS to add instructions for the use, preparation, and distribution of the Wide Area WorkFlow (WAWF) Reparable Receiving Report (RRR). One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. A discussion of the comment received follows:

A. Summary of Significant Changes From the Proposed Rule

There were no significant changes made from the proposed rule.

B. Analysis of Public Comment

Comment: Consider removing or revising the requirement for dollars to be included on every receiving report (RR) in the WAWF iRAPT (Invoice, Receipt, Acceptance, and Property Transfer) application. Many scenarios occur in which it is not a viable option to list a dollar value on a RR such as nonseparately priced items or partial shipments where a value may not be assessed.

Response: This comment is outside the scope of this rule. The requirement to record a unit price on the WAWF RRR is in accord with preexisting DFARS language.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, a final regulatory flexibility analysis has been performed and is summarized as follows:

This rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) appendix F to add the instructions for utilizing the Wide Area WorkFlow (WAWF) Reparable Receiving Report (RRR).

The objective of the rule is to provide the instruction for the use, preparation, and distribution of WAWF RRR that has been created to differentiate between the deliveries of new Government assets (new procurements) and the return of Government property that are repaired or overhauled. This rule improves reporting efficiency by eliminating manual intervention that is currently required to ensure accurate information flow between different Government property reporting systems.

No significant issues were raised by the public comments in response to the initial regulatory flexibility analysis.

The number of small entities affected is unknown. However, DoD expects this rule to have a positive economic impact on contractors, including small businesses, because of the improved efficiency due to electronic report submission.

The projected recordkeeping and reporting is unchanged from current requirements, and only the method of submitting the reports for the return of Government property that has been repaired or overhauled has changed. Preparation of these records requires clerical and analytical skills to create the electronic documents in the WAWF system.

There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

VI. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0248 entitled "Material Inspection and Receiving Report". The projected recordkeeping and reporting is unchanged from current requirements, and only the method of submitting the reports for the return of Government property that has been repaired or overhauled has changed.

List of Subjects in 48 CFR Appendix F to Chapter 2

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR chapter 2, subchapter I, is amended in appendix F as follows:

CHAPTER 2—DEFENSE ACQUISITION REGULATIONS SYSTEM, DEPARTMENT OF DEFENSE

■ 1. The authority citation for appendix F to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend appendix F to chapter 2 by:
■ a. In section F–101, paragraph (a)—
■ i. Removing "(WAWF) Receiving Report" and adding "(WAWF) Receiving Report (RR), WAWF Reparable Receiving Report (WAWF RRR)" in its place; and
■ ii. Adding a sentence at the end of the paragraph;
■ b. In section F–103—
■ i. In paragraphs (a) introductory text, (a)(6), (b) introductory text, and (c), removing "WAWF RR" and adding "WAWF RR, WAWF RRR," in each place;
■ ii. In paragraph (e), removing "WAWF RR provides" and adding "WAWF RR and WAWF RRR provide" in its place; and
■ iii. Adding paragraph (e)(3);
■ c. In section F–104, redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b);
■ d. Revising the part 3 heading;
■ e. In section F–301, revising paragraph (b)(15)(ii) and paragraph (b)(18) introductory text;
■ f. In section F–303, removing "WAWF RR" and adding "WAWF RR or WAWF RRR" in its place;
■ g. Revising section F–304; and
■ h. In section F–306, revising the introductory text and paragraph (a).

The additions and revisions read as follows:

Appendix F to Chapter 2—Material Inspection and Receiving Report

* * * * *

F–101 General.

(a) * * * The WAWF RRR is the electronic equivalent of the DD Form 250 for repair, maintenance, or overhaul of Government-furnished property.

* * * * *

F–103 Use.

* * * * *

(e) * * *

(3) Reporting of Government-furnished property, when the clause at DFARS 252.211–7007, Reporting of Government-Furnished Property, is used in the contract, use of the WAWF RRR will capture the shipment of Government-furnished property items after acceptance of repair services and forward the data to the IUID registry. WAWF is the only way a contractor can report the transfer of Government-furnished property items in the IUID registry.

F–104 Application.

(a) * * *

(b) *WAWF RRR or DD Form 250.* Use as in paragraph (a) of this section for delivery of services for repair, overhaul, or maintenance.

* * * * *

PART 3—PREPARATION OF THE WIDE AREA WORKFLOW (WAWF) RECEIVING REPORT (RR), WAWF REPARABLE RECEIVING REPORT (WAWF RRR), AND WAWF ENERGY RR

F–301 Preparation Instructions.

* * * * *

(b) * * *

(15) * * *

(ii) For service line items, select SV for "SERVICE" in the type field followed by as short a description as is possible in the description field. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing.

(A) For WAWF RRRs, the "Ship To" code is the DoDAAC, MAPAC, or CAGE code from the contract or shipping instructions.

(B) For service line items not using a WAWF RRR, the "Ship To" code and the "Unit" shall be filled out. The "Ship To" code is the destination Service Acceptor Code for WAWF. If source inspected and accepted, enter the service performance location as the "Ship To" code.

* * * * *

(18) Unit Price. The contractor shall enter unit prices on all WAWF RR copies. When using the WAWF RRR, the unit price is the price of the repair, overhaul, or maintenance service from the contract.

* * * * *

F–304 Correction instructions.

Functionality for correcting a WAWF RR or WAWF RRR is available for Defense Contract Management Agency administered contracts paid using the Mechanization of Contract Administration Services system with source acceptance. Preparation instructions and training for corrections is available at *https://wawftraining.eb.mil*. The instructions are part of the Vendor Training section.

* * * * *

F–306 Packing list instructions.

Contractors may also use a WAWF processed RR, including the WAWF RRR, as a packing list. WAWF provides options to print the RR. These printed RRs may also be used if a signed copy is required.

(a) WAWF provides a print capability for its RR. The WAWF printed RR can be identified by its distinctive format and by the text title at the top of each printed page "Material Inspection and Receiving Report in accordance with DFARS Appendix F. Paper DD Form 250 is usable in lieu of this document on an exception basis." (See DFARS 252.232–7003(c)). This printed copy can be used as a packing list. If needed, the signature can be verified by reviewing the signed RR in WAWF.

* * * * *

[FR Doc. 2016–20474 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140501394–5279–02]

RIN 0648–XE830

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2016 Commercial Accountability Measures and Closure for Blueline Tilefish in the South Atlantic Region

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings for blueline tilefish are projected to reach the commercial annual catch limit (ACL) by August 30, 2016. Therefore, NMFS is closing the commercial sector for blueline tilefish in the South Atlantic EEZ at 12:01 a.m., local time, August 30, 2016, and it will remain closed until the start of the next fishing year on January 1, 2017. This closure is necessary to protect the blueline tilefish resource.

DATES: This rule is effective at 12:01 a.m., local time, August 30, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In Regulatory Amendment 25 to the FMP, NMFS implemented management measures for blueline tilefish that included increasing the commercial ACL from 26,766 lb (12,141 kg) to 87,521 lb (39,699 kg), round weight (81 FR 45245, July 13, 2016).

NMFS is required to close the commercial sector for blueline tilefish when the commercial ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register, as specified in 50 CFR 622.193(z)(1)(i). NMFS has projected that the commercial ACL for South Atlantic blueline tilefish will be reached by August 30, 2016. Accordingly, the commercial sector for South Atlantic blueline tilefish is closed effective at 12:01 a.m., local time, August 30, 2016, until 12:01 a.m., local time, January 1, 2017.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having blueline tilefish on board must have landed and bartered, traded, or sold such blueline tilefish prior to August 30, 2016. During the commercial closure, all sale or purchase of blueline tilefish is prohibited. The harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the bag and possession limits specified in 50 CFR 622.187(b)(2) and (c)(1), respectively, while the recreational sector for blueline tilefish is open. These bag and possession limits apply in the South Atlantic on board a vessel with a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, and apply to the harvest of blueline tilefish in both state and Federal waters.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of blueline tilefish and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(z)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for blueline tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations at 50 CFR 622.193(z)(1)(i) have already been subject to notice and comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect blueline tilefish, since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–20847 Filed 8–25–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 168
Tuesday, August 30, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN33

Federal Employees Health Benefits (FEHB) Program: FEHB Employee Premium Contributions for Employees in Leave Without Pay or Other Nonpay Status

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing a proposed rule to provide flexibility to agencies regarding payment for Federal Employees Health Benefits (FEHB) coverage for employees entering leave without pay (LWOP) or any other type of nonpay status, except when nonpay is as a result of a lapse of appropriations. The regulation also affects employees who have insufficient pay to cover their premium contribution. Under current regulations, a Federal agency pays the employee's share and the Government's share of FEHB premiums if an employee in LWOP or other nonpay status elects to continue coverage while in LWOP or other nonpay status and agrees to repay the agency (referred to interchangeably as "employing office") for their employee share upon return to employment for up to 365 days. In other words, the agency must allow an employee to incur a debt for the employee contribution to premium. This outlay of funds may result in an agency incurring a significant amount of debt. This proposed rule would provide an agency with the flexibility to require that all of its employees in LWOP or other nonpay status, except as a result of lapse of appropriations, pay their employee share for FEHB coverage directly to the agency and keep the payments current, if those employees elect to continue FEHB enrollment. Under 5 U.S.C. 8906(e), if an employee in LWOP status chooses to continue FEHB enrollment, the employee and Government contributions shall be paid on a current basis; and, if necessary, the agency shall approve advance payment of a portion of basic pay sufficient to cover the employee contribution. The agency will then recover the amount that it advanced from the employee upon his or her return to employment.

Under current regulations employees in LWOP or other nonpay status can elect to make premium payments directly to an agency and keep payments current. Alternatively, employees in these circumstances may elect not to pay premiums directly on a current basis and can incur a debt such that their employing office advances the payments to cover their premiums. The employee agrees that upon his or her return to employment, or upon pay becoming sufficient, the employing office will deduct, in addition to the current pay period's premium, the accrued unpaid premiums from the employee's salary until the debt is recovered. Under this proposed rule, an agency may choose to require that an employee pay premiums directly to the agency on a current basis if the agency makes a determination that all employees in non-pay or insufficient pay status must pay premiums currently. The proposed rule also specifies the procedures for disenrollment for nonpayment of premiums.

DATES: Comments are due on or before October 31, 2016.

ADDRESSES: Send written comments to Julia Elam, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 4316, 1900 E Street NW., Washington, DC 20415. You may also submit comments using the Federal eRulemaking Portal: *http://www.regulations.gov/*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Julia Elam at (202) 606–0004.

SUPPLEMENTARY INFORMATION: OPM is revising the options and procedures that employing offices may use when an employee elects to continue FEHB coverage in leave without pay (LWOP) or other nonpay status, except as a result of lapse of appropriations, when the employee's pay is insufficient to cover premiums. Under 5 U.S.C. 8906(e)(1)(a), an employee enrolled in a health benefits plan who is placed in a leave without pay or other nonpay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed one year. According to the statute, the agency is responsible for ensuring the employee and Government contributions are paid to the Employees Health Benefits Fund on a current basis; and if necessary, the head of the agency may approve advance payment of employee premiums, which the agency can later recover from the employee. The employee may alternatively elect to terminate FEHB enrollment. This proposed rule does not affect agencies' advancing payment of health insurance premiums for employees with the following categories of qualifying LWOP, which includes the following: Family and Medical Leave Act, performance of duty in the uniformed services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*, receiving medical treatment under Executive Order 5396 (Jul. 7 1930), and periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81. We solicit comments on the exemption of categories of employees in LWOP from this proposed rule.

Under current regulations at 5 CFR 890.502(b), an employing office must inform the employee about available health benefits choices as soon as it becomes aware that an employee's premium payments cannot be made because he or she will be, or already is in a LWOP or other nonpay status, or the employee's pay is insufficient to cover premium. The employing office must give the employee written notice of the options to terminate coverage or continue coverage with either the direct pay or the advance payment option. The employee then must elect in writing to either continue health benefits coverage or terminate it, while in LWOP or other nonpay status or pay is insufficient to cover premiums. If the employee's coverage is continued, the employee may pay the employee share of the premium directly to the agency, or the employee may opt for the agency to advance payment of the employee portion of the premium and agree to repay the premiums to the agency upon returning to employment or upon pay becoming sufficient. Accordingly, there is the possibility that the employee will incur a debt to the agency if the employee chooses to continue coverage and receive an advanced payment and does not return to work or is, for some reason, unable to repay the premium amount. Under § 890.502(b)(2)(ii), the employing office can pay the employee's contributions and recover the amount of accrued unpaid premiums as a debt to the Federal Government upon the employee's return to employment or when the employee's pay becomes sufficient.

Under this proposed regulation, each agency would make the determination of whether its employees in LWOP or other nonpay status would be required to pay the employee share of premiums directly to the agency on a current basis, or whether it is necessary, within the meaning of 5 U.S.C. 8906(e)(1)(B), for the agency to approve advance payment of the employee share of the premium. The agency would make the determination for all its affected employees at least once every 2 years. OPM is proposing this change to complement the FEHB Modification of Eligibility final regulation (79 FR 62325, published on October 17, 2014) which allows generally for certain temporary, intermittent and seasonal employees to enroll in the FEHB Program if they are expected to work at least 130 hours per month for at least 90 days. OPM recognizes that the recent expansion of eligibility for FEHB coverage may impact an agency's budget due to the required FEHB Government health benefit contributions for newly eligible employees who elect to participate in FEHB coverage and go into LWOP or other nonpay status based on the intermittent nature of the work performed.

OPM proposes for § 890.502(b) to establish that an agency have the discretion to determine whether it is necessary for employees in LWOP or other nonpay status to be advanced a portion of basic pay sufficient to pay current employee contribution to premium, or whether the employees must be required to pay the employee contribution of the FEHB premium currently to the agency. The determination made by the agency must apply to all employees in non-pay or insufficient pay status, and it cannot be made on a case-by-case basis. When assessing whether it is necessary to pay advanced employee contributions for premiums, the regulation provides that an agency shall balance the needs of the agency, including available financial resources and ease of operation, with those of its employees, including typical job series and pay grades and access to direct payment methods. Agencies should also consider that if they do advance employee contributions for premiums, these employees will incur a debt which may not occur if the employee had an option to pay premiums directly to the agency. We are seeking comment on these and other factors agencies should utilize to make this determination. The agency may reassess its determination every one or two years and provide notification to all employees. An agency may default to its original determination and is not required to make a new determination at the time of reassessment. If an agency chooses to require its employees in these circumstances to make direct premium contributions on a current basis, it must provide written notice to the affected employees. This section also explains that an agency may choose the other option to exercise its discretion to approve advance payment of the employee portion of the premium while its employees are in LWOP or other nonpay status. This would be a change to current regulations at § 890.502(b)(2)(ii), which presently provides that an employee may choose this option if he or she does not does not wish to pay the premium directly to the agency and keep the payments current.

OPM proposes for § 890.502(c)(2) to establish procedures for terminating enrollment for employees in LWOP or nonpay status that fail to directly pay premiums currently. The regulation also proposes notice requirements for the employee to receive regarding termination of enrollment.

Under this proposed regulation, an employee that is in LWOP or other nonpay status or has insufficient pay to cover his or her share of FEHB premiums will have his or her enrollment cancelled if he or she has signed an agreement to directly pay premiums on a current basis and fails to make these payments currently, or enrollment terminated if the employee does not return the written notice. The proposed regulation gives an employee the opportunity to seek reinstatement from the agency if he or she can show they were prevented from paying premiums, or from returning the written notice, by circumstances beyond their control. The employee must describe the circumstances that prevented him or her from making a payment or returning the notice within 31 days after receiving notice of disenrollment. Under this proposal, termination of an enrollment for failure to return a written notice entitles the employee to a 31-day temporary extension of coverage and opportunity to convert to an individual policy, while failure to pay premiums after electing to continue FEHB enrollment is considered a cancellation. OPM is seeking comments on the implementation of this proposed rule for employees currently on LWOP or other nonpay status in which pay is insufficient to cover the employee share of FEHB premiums. OPM proposes making the rule effective for employees who enter into LWOP or other nonpay status after the date of the rule and not affecting employees currently on LWOP or other nonpay status.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rule is not considered a major rule because there will be a minimal impact on costs to Federal agencies.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health insurance benefits of Federal employees and annuitants.

Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule restates existing rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects on 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

For the reasons set forth in the preamble, the Office of Personnel Management proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of 101, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f),11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

Subpart E—Contributions and Withholdings

■ 2. In § 890.502:

■ a. Redesignate paragraphs (b) through (f) as paragraphs (c) through (g).

■ b. Add new paragraph (b).

■ c. Revise newly redesignated paragraph (c).

The addition and revision read as follows:

§ 890.502 Withholdings, contributions, LWOP, premiums, and direct premium payment.

* * * * *

(b) *Agency flexibility to require direct payment of employee premiums on a current basis.* An agency may require all employees that enter leave without pay (LWOP) or other nonpay status except for as a result of lapse of appropriations, whose pay is insufficient to cover premium, pay their employee premium contributions directly to the agency on a current basis or; if necessary, the agency may elect to provide advance payment of the employee portion of premium for all employees in these circumstances. In determining whether it is necessary to pay employee contributions for premiums, an agency shall balance the needs of the agency, including available financial resources and ease of operation, with those of its employees, including typical job series and pay grades and access to direct payment methods. The agency may reassess its policy decision every one or two years and should provide notification to all its employees. An agency must choose one of these two options for all employees that enter non-pay status or whose pay is insufficient to cover premium, except for certain qualifying LWOP categories.

(1) For purposes of this paragraph (b), qualifying LWOP categories are exempt from an agency determination. Regardless of the agency's determination under paragraph (b), an agency shall advance payment for employee premiums for employees utilizing the following categories of LWOP: For purposes of the Family and Medical Leave Act, for performance of duty in the uniformed services under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301 *et seq.*, for receiving medical treatment under Executive Order 5396 (Jul. 7 1930), and for periods during which workers compensation is received under the Federal Employees Compensation Act, 5 U.S.C. chapter 81.

(2) If an employing office requires an employee to pay the employee share of premium contributions directly to the agency on a current basis for the period during which an employee specifies he or she will be in LWOP or other nonpay status, the employing office must provide the employee written notice and an agreement that he or she will be required to pay premiums directly to the agency on a current basis by following the procedures as outlined in paragraphs (c)(2) of this section. The employee must sign the agreement if he or she chooses to continue coverage under an agency's election to require that payments be made directly on a current basis.

(3) If necessary, an agency may elect to advance a portion of basic pay sufficient to pay current employee contributions to premium for employees entering LWOP or other nonpay status. If the agency so elects, the employing office must provide the employee written notice and an agreement that he or she will incur a debt to the extent of the advanced premiums, and will be required to repay the unpaid premiums from salary deduction, upon returning to pay status or upon payment becoming sufficient to cover premiums, until the debt is recovered in full, by following the procedures as outlined in paragraphs (c)(2) of this section.

* * * * *

(c) *Procedures when an employee enters a leave without pay (LWOP) or other nonpay status or pay is insufficient to cover premium.* The employing office must tell the employee about available health benefits choices as soon as it becomes aware that an employee's premium payments cannot be made because he or she will be or is already in a leave without pay (LWOP) status or other type of nonpay status. (This does not apply when nonpay is as a result of a lapse of appropriations or employees have been furloughed. In these instances, the premiums will accumulate and be paid upon return to duty). The employing office must also tell the employee about the option available to them as determined by the agency or that the employee can elect to terminate enrollment when an employee's pay is not enough to cover the premiums.

(1) The employing office must provide the employee written notice of the option available to them as determined by the agency and consequences as described in paragraphs (c) (2) (i) and (ii) of this section and will send a letter by first class mail if it cannot give it to the employee directly. If it mails the notice, it is deemed to be received within 5 days.

(2) The employee must elect in writing to either continue their FEHB enrollment under the option that the employer has chosen or terminate it. (Exception: An employee who is subject to a court or administrative order as discussed in § 890.301(g)(3) cannot elect to terminate his or her enrollment as long as the court or administrative order is still in effect and the employee has at least one child identified in the order who is still eligible under the FEHB Program, unless the employee provides documentation that he or she has other coverage for the child(ren).) The employee may continue enrollment by returning a signed form to the employing office within 31 days after he or she receives the notice (45 days for an employee residing overseas). When an employee mails the signed form, its postmark will be used as the date the form is returned to the employing office. If an employee elects to continue their enrollment under the option that the employer has chosen, he or she must elect in writing the option that has been specified by the employing office for all employees as described in paragraph (b). The employee would agree to the following as specified by the employing office:

(i) If the agency has elected to allow all employees to pay the premium directly to the agency and keep the payments current, the employee must agree to pay the premium directly, or;

(ii) If the agency has elected to allow all employees to incur a debt as described in paragraph (b)(2) he or she must agree that upon returning to employment or upon pay becoming sufficient to cover the premiums, the employing office will deduct, in addition to the current pay period's premiums, an amount equal to the premiums for a pay period during which the employee was in a leave without pay (LWOP) or other nonpay status, or pay was not enough to cover premiums. The employing office will continue using this method to deduct the accrued unpaid premiums from salary until the debt is recovered in full.

The employee must also agree that if he or she does not return to work or the employing office cannot recover the debt in full from salary, the employing office may recover the debt from whatever other sources it normally has available for recovery of a debt to the Federal Government.

(iii) If an employee elects to terminate enrollment, the effective date of the termination is retroactive to the end of the last pay period in which the premium was withheld from pay.

(3) If the employee does not return the signed form within the time period described in paragraph (c)(2) of this section, the employing office will terminate the enrollment and notify the employee in writing of the termination.

(4) If an employee has not elected to terminate enrollment and is prevented by circumstances from returning a signed form indicating the employee elects to continue their enrollment under the option that the employer has chosen, the employee may request reinstatement.

(i) If the employee is prevented by circumstances beyond his or her control from returning a signed form to the employing office within the time period described in paragraph (c)(2) of this section, he or she may write to the employing office and request reinstatement of the enrollment. The employee must describe the circumstances that prevented him or her from returning the form. The request for reinstatement must be made within 30 calendar days from the date the employing office gives the employee notice of the termination. The employing office will determine if the employee is eligible for reinstatement of coverage. When the determination is affirmative, the employing office will reinstate the enrollment of the employee retroactive to the date of termination. If the determination is negative, the employee may request a review of the decision from the employing office (see § 890.104).

(ii) If the employee is subject to a court or administrative order as discussed in § 890.301(g)(3), the coverage cannot terminate unless the employee has provided documentation to the employing office that he or she has other coverage for the child or children, and the employing office has determined the coverage is appropriate, as discussed in 5 CFR 890.301(g)(3). If the employee does not return the signed form, the coverage will continue and the employee will incur a debt to the Federal Government, and the employing office will recover the amount of accrued unpaid premium as a debt under as discussed in paragraph(c)(2)(ii) of this section.

(5) Terminations of enrollment under paragraphs (c)(2) and (3) of this section are retroactive to the last day of the last pay period in which the premium was withheld from pay. The employee and covered family members, if any, are entitled to the 31-day temporary extension of coverage and opportunity to convert to a non-group policy under § 890.401. An employee whose coverage is terminated under this paragraph may re-enroll upon his or her return to duty in pay status in a position in which the employee is eligible for coverage under this part.

(6) If an employee signs and returns a form to the employing office stating that he or she will make premium payments directly to the agency and keep the payments current in accordance with paragraph (c)(2)(i) but fails to pay currently, as soon as it becomes aware of the nonpayment of premium, the employing office shall notify the employee that he or she has 31 days to make payments current or she or he will have coverage terminated retroactively to the day that follows the last day of the last pay period for which a current employee contribution was received.

(i) If the employee does not make a payment within the 31 days of the notification, the employing office must terminate the employee's enrollment retroactively to the day that follows the last day of the last pay period for which a current employee contribution was received.

(ii) Termination of an enrollment for failure to pay premiums after the employee had elected to continue coverage and to pay premiums currently under (c)(2)(i) and (c)(6), is considered a cancellation as described in § 890.401(a)(2) and the employee is not entitled to a 31-day temporary extension of coverage or opportunity to convert to an individual policy.

(iii) If an employee that has enrollment terminated under this part was prevented by circumstances beyond his or her control from making payment within 31 days after receipt of the notice of termination, he or she may request reinstatement of coverage by writing to the employing office. Such a request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the employee was prevented by circumstances beyond his or her control from paying within the time limit. The verification must describe the circumstances that prevented him or her from making a payment within 31 days after receipt of the notice of termination. The employing office will determine if the employee is eligible for reinstatement of coverage; and, when the determination is affirmative, notify the carrier of the decision. The notice must set forth the findings on which the decision was based. If the employing office determines that the employee was prevented from making payments current within the timeframe due to circumstances beyond his or her control, the employee's enrollment will be reinstated retroactive to the date of termination.

(iv) An employee whose coverage is terminated under paragraph (c)(6) may enroll upon his or her return to duty in pay status in a position in which the employee is eligible for coverage.

* * * * *

[FR Doc. 2016–20565 Filed 8–29–16; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–16–0069; NOP–16–08]

National Organic Program: Notice of Interim Instruction on Material Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability of interim instruction with request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing the availability of an interim instruction document intended for use by accredited certifying agents. The interim instruction document is entitled: NOP 3012: Material Review. This instruction specifies the criteria and process that USDA accredited organic certifying agents (certifiers) must follow when approving substances for use in organic production and handling. This instruction is directed at certifiers, who must meet certain terms and conditions as part of their accreditation. The AMS invites interested parties to submit comments about this instruction document.

DATES: To ensure that NOP considers your comment on this interim instruction before it begins work on the final version, submit written comments on the interim instruction by October 31, 2016.

ADDRESSES: Submit written requests for hard copies of this interim instruction to Dr. Paul Lewis, Standards Division, National Organic Program (NOP), USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the interim instruction document.

You may submit comments, identified by AMS–NOP–16–0069; NOP–16–08, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Dr. Paul Lewis, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: Written comments responding to this request should be identified with the document number AMS–NOP–16–0069; NOP–16–08. You should clearly indicate your position and the reasons supporting your position. If you are suggesting changes to the interim instruction document, you should include recommended language changes, as appropriate, along with any relevant supporting documentation.

USDA intends to make available all comments, including names and addresses when provided, regardless of submission procedure used, on *www.regulations.gov* and at USDA, AMS, NOP, Room 2646—South building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to noon and from 1 to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South building to view comments from the public to this notice are requested to make an appointment by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Lewis, Standards Director, National Organic Program (NOP), USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646—So., Ag Stop 0268, Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808; Email: *PaulI.Lewis@ams.usda.gov;* or visit the NOP Web site at: *www.ams.usda.gov/nop.*

SUPPLEMENTARY INFORMATION:

I. Background

This interim instruction specifies the criteria and process that accredited certifying agents (certifiers) must follow when approving substances for use in organic production and handling. This instruction is directed at certifiers, who must meet certain terms and conditions as part of their accreditation (see 7 CFR 205.501(a)(21)).

The instruction defines the term Material Review Organization (MRO) and materials, and describes the USDA organic regulations as they relate to materials reviews. The instruction describes the policy that all certifiers must review all materials used by organic producers and handlers for compliance with the USDA organic regulations, and outlines options that certifiers have for determining whether materials may be used in organic production or handling under the USDA organic regulations.

The instruction also outlines certifier requirements for maintaining documentation, making synthetic vs. nonsynthetic or agricultural vs. nonagricultural determinations; demonstrating appropriate education, training, and experience levels for personnel conducting material reviews; and creating clear written protocols and procedures related to materials reviews. This instruction also outlines the process that occurs when different certifying agents and MROs reach different conclusions on whether a product complies with the USDA organic regulations.

A notice of availability of the final instruction on this topic will be issued upon review of comments and final approval of the document. Upon final approval, this instruction will be available in "The Program Handbook: Guidance and Instructions for Accredited Certifying Agents (ACAs) and Certified Operations". This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the USDA organic regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/rules-regulations/organic.*

II. Electronic Access

Persons with access to Internet may obtain the interim instruction at either NOP's Web site at *http://www.ams.usda.gov/rules-regulations/organic* or *http://www.regulations.gov.* Requests for hard copies of the interim instruction document can be obtained by submitting a written request to the mailing address listed in the **ADDRESSES** section of this Notice.

Authority: 7 U.S.C. 6501–6522.

Dated: August 25, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–20806 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0098]

RIN 0579–AE27

Importation of Fresh Persimmon With Calyxes From Japan Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmon with calyxes from Japan into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the agreed upon systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action would allow the importation of fresh persimmons with calyxes from Japan while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before October 31, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0098.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0098* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Japan has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh persimmons (*Diospyros kaki* Thunb.) with calyxes from Japan to be imported into the United States. As part of our evaluation of Japan's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled "Importation of Persimmon, *Diospyros kaki* Thunb., as Fresh Fruit with Calyxes from Japan into the United States," (January 3, 2013) evaluates the risks associated with the importation of fresh persimmons from Japan into the United States. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of fresh persimmons from Japan.

The PRA identified 19 pests of quarantine significance present in Japan that could be introduced into the United States through the importation of fresh persimmons. They are:

Arthropods:

- A mite, *Tenuipalpus zhizhilashviliae* (Reck);
- The moths *Conogethes puntiferalis* (Guenée), *Homonopsis illotana* (Kennel), *Lobesia aeolopa* (Meyrick), and *Stathmopoda masinissa* (Meyrick);
- The mealybugs *Crisicoccus matsumotoi* (Siraiwa) and *Pseudococcus cryptus* (Hempel); and
- The thrips *Ponticulothrips diospyrosi* (Haga & Okajima), *Scirtothrips dorsalis* (Hood), and *Thrips coloratus* (Schmutz).

Fungi:

- *Adisciso kaki* Yamamoto;
- *Colletotrichum horii* B. Weir & P.R. Johnst;
- *Cryptosporiopsis kaki* (Hara) Weinlm;
- *Mycosphaerella nawae* Hiura & Ikata;
- *Pestalotia diospyri* Syd. and P. Syd.;
- *Pestalotiopsis acacia* (Thumen) Yokoyama & Kaneko;
- *Pestalotiopsis crassiuscula* Steyaert;
- *Phoma kakivora* Hara; and
- *Phoma loti* Cooke.

A quarantine pest is defined in § 319.56–2 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Potential plant pest risks associated with the importation of fresh persimmons from Japan into the United States were determined by estimating the consequences and likelihood of introduction of quarantine pests into the United States and ranking the risk potential as high, medium, or low. The PRA determined that 6 of the 19 pests—*C. punctiferalis, H. illotana, L. aeolopa, P. cryptus, S. dorsalis,* and *P. diospyri*—pose a high risk of following the pathway of persimmons from Japan into the United States and having negative effects on U.S. agriculture. The remaining pests were rated as having a medium risk potential.

Based on the conclusions of the PRA and the RMD, we have determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of persimmons with calyxes from Japan into the United States subject to a systems approach. The conditions in the systems approach that we are proposing are described below. These conditions would be added to the regulations in a new § 319.56–76.

General Requirements

Proposed paragraph (a)(1) of § 319.56–76 would require the NPPO of Japan to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–76. The operational workplan would have to include and describe in detail the quarantine pest survey intervals and other specific requirements in proposed § 319.56–76.

An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Proposed paragraph (a)(2) would require persimmons from Japan to be imported only in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Place of Production Requirements

Proposed paragraph (b)(1) would require that all places of production participating in the persimmon export program be approved by and registered with the NPPO of Japan.

Paragraph (b)(2) would require the NPPO of Japan or its approved designee[1] to visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping for quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. APHIS may also monitor the places of production if necessary. If APHIS or the NPPO of

---

[1] An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

Japan finds that a place of production is not complying with the requirements of the regulations, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and appropriate remedial actions have been implemented.

Paragraph (b)(3) would require that harvested fruit must be transported to the packinghouse in containers marked to identify the place of production from which the consignment of fruit originated.

Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (c) of proposed § 319.56–76. Paragraph (c)(1) would require that all packinghouses participating in the persimmon export program be approved by and registered with the NPPO of Japan.

Paragraph (c)(2) would require that, during the time that the packinghouse is in use for exporting persimmons to the United States, the packinghouse would only be allowed to accept persimmons from approved and registered production sites and that the persimmons be segregated from other fruit. This requirement would prevent persimmons intended for export to the United States from being exposed to or mixed with persimmons or other fruit that are not produced according to the requirements of this section.

Paragraph (c)(3) would require that all damaged, deformed, or diseased fruit be culled before or during packing and removed from the packinghouse. Fruit with broken or bruised skin or that is deformed is more susceptible to infestation by pests than undamaged fruit.

Under paragraph (c)(4), the boxes or other containers in which the fruit is shipped would have to be marked to identify the orchard from which the consignment of fruit originated and the packinghouse where it was packed. Such box marking would facilitate traceback of a consignment of persimmon fruit to the packinghouse in which it was packed and place of production in the event that quarantine pests were discovered in the consignment after it has left the packinghouse.

Paragraph (c)(5) would require the NPPO of Japan to monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the regulations. If the NPPO of Japan finds that a packinghouse is not complying with the requirements of the regulations, no persimmon fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and both agree that the pest risk has been mitigated.

Sampling

Paragraph (d) of proposed § 319.56–76 would require that a biometric sample of persimmon fruit, at a rate determined by APHIS, be inspected by the NPPO of Japan following post-harvest processing. The biometric sample would be visually inspected for signs of pests or disease, and a portion of the fruit, as determined by APHIS, would be cut open to detect internally feeding pests. If quarantine pests are found during sampling, the consignment of fruit would be prohibited from export to the United States.

Phytosanitary Certificate

To certify that the fresh persimmon fruit from Japan has been grown and packed in accordance with the requirements of proposed § 319.56–76, paragraph (e) would require each consignment of fruit to be accompanied by a phytosanitary certificate issued by the NPPO of Japan, with an additional declaration stating that they were produced under and meet all the components of the regulations and were inspected and found to be free of quarantine pests in accordance with the requirements.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is proposing to amend the regulations to allow the importation of fresh persimmon (*Diospyros kaki*) into the United States from Japan subject to a systems approach. Most U.S. persimmon production takes place in California, where 2013 production totaled about 35,700 metric tons (MT) valued at about $40 million, triple the 2011 level of production. U.S. persimmon imports totaled 1,757 MT valued at about $3 million in 2014, $2 million of which were persimmons imported from Israel and $0.4 million from Spain. The United States is a net exporter of fresh persimmons, with the value of exports totaling about $6 million in 2014.

Japan's persimmon acreage and production have been gradually declining over the last decade. A very small percentage of Japan's persimmons (about 0.2 percent of production) was exported in 2014, totaling about 578 MT and valued at $2.4 million. The average export price of fresh persimmons from Japan was $4.13/kilogram (kg) in 2014. This price is considerably higher than the average price paid by the United States for fresh persimmon imports, about $1.70/kg in 2014, and the average farm-gate price for persimmons produced in California, about $1.11/kg in 2013. The wide price differential between persimmons exported from Japan and persimmons imported or produced by the United States suggests that the competitiveness of persimmons from Japan in the U.S. market would be limited.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is $750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact of the proposed rule for these entities would be minimal, given Japan's expected small share of the U.S. persimmon market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow persimmons to be imported into the United States from Japan. If this proposed rule is adopted, State and local laws and regulations regarding persimmon fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0098. Please send a copy of your comments to APHIS using one of the methods described under **ADDRESSES** at the beginning of this document.

APHIS is proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmon with calyxes from Japan into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, and sampling. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the agreed upon systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements. Implementing this rule will require information collection activities, such as operational workplans, production site registration, box markings, inspection, remedial investigations, packinghouse registration, monitoring, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.0035 hours per response.

Respondents: Foreign businesses and Japan's NPPO.

Estimated annual number of respondents: 11.

Estimated annual number of responses per respondent: 4,553.

Estimated annual number of responses: 50,087.

Estimated total annual burden on respondents: 177 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–76 is added to subpart—Fruits and Vegetables read as follows:

§ 319.56–76 Persimmons with Calyxes from Japan.

Fresh persimmons (*Diospyros kaki* Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Adisciso kaki* Yamamoto, a fungus; *Colletotrichum horii* B. Weir & P.R. Johnst, a fungus; *Conogethes puntiferalis* (Guenée), a yellow peach moth; *Crisicoccus matsumotoi* (Siraiwa), a mealybug; *Cryptosporiopsis kaki* (Hara) Weinlm, a fungus; *Homonopsis illotana* (Kennel), a moth; *Lobesia aeolopa* (Meyrick), a moth; fungi *Mycosphaerella nawae* Hiura & Ikata, *Pestalotia diospyri* Syd. and P. Syd., *Pestalotiopsis acacia* (Thumen) Yokoyama & Kaneko, *Pestalotiopsis crassiuscula* Steyaert, *Phoma kakivora* Hara, and *Phoma loti* Cooke; *Ponticulothrips diospyrosi* (Haga & Okajima), a thrip; *Pseudococcus cryptus* (Hempel), a mealybug; *Scirtothripsdorsalis* (Hood), a thrip; *Stathmopoda masinissa* (Meyrick), a moth; *Tenuipalpus zhizhilashviliae* (Reck), a mite; and *Thrips coloratus* (Schmutz), a thrip.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Japan must provide an operational workplan to APHIS that details the activities that the NPPO of Japan will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(2) *Commercial consignments.* Persimmons from Japan may be imported in commercial consignments only.

(b) *Places of production requirements.* (1) All places of production that participate in the export program must be approved by and registered with the Japan NPPO.

(2) The NPPO of Japan or its approved designee must visit and inspect the place of production monthly beginning at blossom drop and continuing until the end of the shipping season for

quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. If APHIS or the NPPO of Japan finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and both agree that appropriate remedial actions have been implemented.

(3) Harvested fruit must be transported to the packinghouse in containers marked to identify the place of production from which the consignment of fruit originated.

(c) *Packinghouse requirements.* (1) All packinghouses that participate in the export program must be approved by and registered with the Japanese NPPO.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved production sites and the fruit must be segregated from fruit intended for other markets.

(3) All damaged, deformed, or diseased fruit must be culled at the packinghouse.

(4) Boxes or other containers in which the fruit is shipped must be marked to identify the place of production where the fruit originated and the packinghouse where it was packed.

(5) The NPPO of Japan must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the regulations. If the NPPO of Japan finds that a packinghouse is not complying with the requirements of this section, no fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of Japan conduct an investigation and both agree that appropriate remedial actions have been implemented.

(d) *Sampling.* Inspectors from the NPPO of Japan must inspect a biometric sample of the fruit, at a rate determined by APHIS, from each consignment. The inspectors must visually inspect the biometric sample for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit, at a rate determined by APHIS, to inspect for quarantine pests that are internal feeders. If quarantine pests are detected in this inspection, the consignment will be prohibited from export to the United States.

(e) *Phytosanitary certificate.* Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the Japan NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of pests in accordance with the requirements of 7 CFR 319.56–76.

Done in Washington, DC, this 24th day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–20724 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7095; Directorate Identifier 2015–SW–085–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters. This proposed AD would require removing from service the tail gearbox center housing (housing) when it has 12,200 or more hours time-in-service (TIS). This proposed AD is prompted by fatigue analysis conducted by Sikorsky that determined the housing required a retirement life. The proposed actions are intended to prevent a crack in the housing, which could lead to loss of tail rotor drive and loss of helicopter control.

DATES: We must receive comments on this proposed AD by October 31, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7095; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.*

You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Kristopher Greer, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone 781–238–7799; email *Kristopher.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for Sikorsky Model S–92A helicopters with a housing, part number (P/N) 92358–06107–043, installed. This proposed AD would establish a life limit of 12,200 hours TIS for the housing by requiring that the housing be removed from service when it reaches 12,200 hours TIS. This proposed AD is prompted by an analysis conducted by Sikorsky on the Model S–92A helicopter for a gross weight increase that revealed higher than expected loads. The housing currently has no life limit. Sikorsky's analysis, which used updated load conditions and updated fatigue analysis software, determined housings that remain in service beyond 12,200 hours TIS present an unacceptable risk of cracking. This condition could result in loss of tail rotor drive and loss of helicopter control.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

We reviewed Sikorsky S–92 Maintenance Manual 4–00–00, Temporary Revision No. 4–49, dated April 10, 2015, which establishes a replacement interval of 12,200 hours for housing, P/N 92358–06107–043.

Proposed AD Requirements

This proposed AD would require, before further flight, removing from service any tail gearbox housing, P/N 92358–06107–043, that has 12,200 or more hours TIS.

Costs of Compliance

We estimate that this proposed AD would affect 80 helicopters of U.S. Registry and that labor costs average $85 per work hour. Based on these estimates, we expect the following costs. Replacing the housing would require 24 work-hours, and parts would cost $58,000 for a total cost of $60,040 per helicopter.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

SIKORSKY AIRCRAFT CORPORATION: Docket No. FAA–2015–7095; Directorate Identifier 2015–SW–085–AD.

(a) Applicability

This AD applies to Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopters, certificated in any category, with a tail gearbox center housing, part number (P/N) 92358–06107–043, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a tail gearbox center housing. This condition could result in failure of the tail rotor drive and consequently loss of helicopter control.

(c) Comments Due Date

We must receive comments by October 31, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Before further flight, remove from service any tail gearbox housing, P/N 92358–06107–043, that has 12,200 or more hours time-in-service.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Kristopher Greer, aerospace engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, FAA, 1200 District Avenue, Burlington, Massachusetts 01803; telephone 781–238–7799; email *Kristopher.Greer@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800-Winged-S or 203–416–4299; email *sikorskywcs@sikorsky.com.* You may review a copy of the information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

Issued in Fort Worth, Texas, on August 19, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–20672 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9049; Directorate Identifier 2016–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Empresa Brasileira de Aeronautica S.A. (Embraer) Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD was prompted by reports of main airspeed indication discrepancies during flight; these discrepancies resulted from ice blockages in certain pitot total pressure lines. This proposed AD would require an inspection for tube misalignment of the pitot number 1 and pitot number 2 tube assembly lines, and corrective actions if necessary; installation or replacement (as applicable) of a tube ribbon heater on the pitot number 1 and pitot number 2 tube assembly lines; and revision of the airplane flight manual (AFM) to provide certain procedures and airspeed tables for the flightcrew. We are proposing this AD to detect and correct water accumulating and freezing in the pitot number 1 and pitot number 2 total pressure lines, which could result in erroneous main airspeed indications and consequent reduced ability of the flightcrew to maintain safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9049; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9049; Directorate Identifier 2016–NM–039–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to http://www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2016–03–01, effective March 11, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The MCAI states:

> This [Brazilian] AD results from reports of main airspeed indication discrepancies during flight. The investigation has revealed that Pitot #1 and #2 total pressure line blockage may occur due to water accumulation and freezing during heavy rain conditions. We are issuing this [Brazilian] AD to prevent water accumulation and freezing in the Pitot #1 and Pitot #2 total pressure lines, which could result in erroneous main airspeed indications and reduce the ability of the flight crew to maintain the safe flight and landing of the airplane.
>
> Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this [Brazilian] AD . . . .

The required actions include a general visual inspection for tube misalignment of pitot number 1 and pitot number 2 tube assembly lines. Corrective actions include replacement of affected pitot tubes with new pitot tubes. The required actions also include installation, or, for certain airplanes, replacement, of a tube ribbon heater on the pitot number 1 and pitot number 2 tube assembly lines, and revision of the AFM to provide certain procedures and airspeed tables for the flightcrew. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9049.

Related Service Information Under 1 CFR Part 51

Embraer has issued the following service information.

- Embraer Service Bulletin 145–30–0056, Revision 01, dated March 31, 2014; and Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014. This service information describes procedures to inspect the pitot pressure tubes for misalignment, install new heaters, and perform repairs.

- Embraer Temporary Revision (TR) 19.1, dated April 22, 2014, to Volume 1 of the Embraer EMB–145 Aircraft Operations Manual (AOM) AOM–2014135/1542. This service information contains, among other things, the "Unreliable Airspeed Procedure" in the Emergency/Abnormal Procedures section and the "Unreliable Airspeed Tables" (corresponding to the airplane configuration) in the Performance section.
- Embraer TR 40.2, dated April 4, 2014, to Volume 1, of the Embraer EMB–145 AOM AOM–145/1114. This service information contains, among other things, the "Unreliable Airspeed Procedure" in the Emergency/Abnormal Procedures section and the "Unreliable Airspeed Tables" (corresponding to the airplane configuration) in the Performance section.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 668 airplanes of U.S. registry.

We also estimate that it would take up to 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $3,254 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $2,457,572, or up to $3,679 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (Embraer): Docket No. FAA–2016–9049; Directorate Identifier 2016–NM–039–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Empresa Brasileira de Aeronautica S.A. (Embraer) airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(4) of this AD.

(1) Model EMB–135ER, EMB–135KE, EMB–135KL, EMB–135LR, EMB–145, EMB–145EP, EMB–145ER, EMB–145LR, EMB–145MP, EMB–145MR, and EMB–145XR airplanes, as identified in Embraer Service Bulletin 145–30–0056, Revision 01, dated March 31, 2014.

(2) Model EMB–135BJ airplanes, as identified in Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014.

(3) Model EMB–135ER, EMB–135KE, EMB–135KL, EMB–135LR, EMB–145, EMB–145EP, EMB–145ER, EMB–145LR, EMB–145MR, EMB–145MP, and EMB–145XR airplanes, manufacturer serial numbers (MSNs) 14501153 and subsequent.

(4) Model EMB–135BJ airplanes, MSNs 14501190 through 14501197 inclusive, 14501199 through 14501210 inclusive, 14501212 through 14501227 inclusive, and 14501229 through 14501249 inclusive and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

(e) Reason

This AD was prompted by reports of main airspeed indication discrepancies during flight; these discrepancies resulted from ice blockages in certain pitot total pressure lines. We are issuing this AD to detect and correct water accumulating and freezing in the pitot number 1 and pitot number 2 total pressure lines, which could result in erroneous main airspeed indications and consequent reduced ability of the flightcrew to maintain safe flight and landing of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection, Corrective Action, and Installation

(1) For airplanes identified as Group 1 in Embraer Service Bulletin 145–30–0056,

Revision 01, dated March 31, 2014: Within 6,600 flight hours after the effective date of this AD, do a general visual inspection for tube misalignment on the pitot number 1 and pitot number 2 tube assemblies; do all applicable corrective actions; and install a new tube ribbon heater on the pitot number 1 and pitot number 2 tube assemblies; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0056, Revision 01, dated March 31, 2014. Do all applicable corrective actions before further flight.

(2) For airplanes identified as Group 1 in Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014: Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, do a general visual inspection for tube misalignment on the pitot number 1 and pitot number 2 tube assemblies; do all applicable corrective actions; and install a new tube ribbon heater on the pitot number 1 and pitot number 2 tube assemblies; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014. Do all applicable corrective actions before further flight.

(h) Inspection, Corrective Action, and Replacement

(1) For airplanes identified as Group 2 in Embraer Service Bulletin 145–30–0056, Revision 01, dated March 31, 2014: Within 6,600 flight hours after the effective date of this AD, do a general visual inspection for tube misalignment on the pitot number 1 and pitot number 2 tube assemblies; do all applicable corrective actions; and replace the tube ribbon heater with a new tube ribbon heater on the pitot number 1 and pitot number 2 tube assemblies; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0056, Revision 01, dated March 31, 2014. Do all applicable corrective actions before further flight.

(2) For airplanes identified as Group 2 in Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014: Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, do a general visual inspection for tube misalignment on the pitot number 1 and pitot number 2 tube assemblies; do all applicable corrective actions; and replace the tube ribbon heater with a new tube ribbon heater on the pitot number 1 and pitot number 2 tube assemblies; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145LEG–30–0021, dated March 31, 2014. Do all applicable corrective actions before further flight.

(i) Airplane Flight Manual (AFM) Revision

(1) For airplanes identified in paragraphs (c)(1) and (c)(3) of this AD: Within 60 days after the effective date of this AD, revise the AFM to include the information in the "Unreliable Airspeed Procedure" in the Emergency/Abnormal Procedures section and the "Unreliable Airspeed Tables" (corresponding to the airplane configuration) in the Performance section, as specified in Embraer Temporary Revision (TR) 40.2, dated April 4, 2014, to Volume 1, of the Embraer EMB–145 Aircraft Operations Manual (AOM) AOM–145/1114 ("Embraer TR 40.2").

(2) For airplanes identified in paragraphs (c)(2) and (c)(4) of this AD: Within 60 days after the effective date of this AD, revise the AFM to include the information in the "Unreliable Airspeed Procedure" in the Emergency/Abnormal Procedures section and the "Unreliable Airspeed Tables" (corresponding to the airplane configuration) in the Performance section, as specified in Embraer TR 19.1, dated April 22, 2014, to Volume 1 of the Embraer EMB–145 AOM AOM–2014135/1542 ("Embraer TR 19.1").

(j) AFM Revision Method of Compliance

The AFM revisions required by paragraphs (i)(1) and (i)(2) of this AD may be done by inserting Embraer AOM TR 40.2 or Embraer AOM TR 19.1, as applicable, into the AFM. When the applicable Embraer AOM TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Embraer AOM TR 40.2 or Embraer AOM TR 19.1, as applicable, and the applicable Embraer AOM TR may be removed from the AFM.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g)(1) and (h)(1) of this AD, if those actions were performed before the effective date of this AD using Embraer Service Bulletin 145–30–0056, dated December 19, 2013.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2016–03–01, effective March 11, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9049.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20684 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9051; Directorate Identifier 2016–NM–035–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and A300 B4–622R airplanes; and Model A300 C4–605R Variant F airplanes. This proposed AD was prompted by an in-service detection of cracks in the fuselage skin lap joints. This proposed AD would require an ultrasonic inspection of certain skin lap joints, and repair if necessary. We are proposing this AD to detect and correct cracks in certain skin lap joints. Such cracking could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9051; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9051; Directorate Identifier 2016–NM–035–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0557, dated March 18, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A300 B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and A300 B4–622R airplanes; and Model A300 C4–605R Variant F airplanes. The MCAI states:

> Prompted by in-service detection on Airbus A300–600 aeroplanes of cracks in certain fuselage skin lap joints, several studies were launched to understand the phenomenon and provide the corrective actions. More recently, new analyses were performed and the results identified that a new area has to be inspected at the skin lap joint below Stringer (STR) 28 at Frame (FR) 72 to FR 76.
>
> This condition, if not detected and corrected, could result in reduced structure integrity of the aeroplane.
>
> To address this unsafe condition, Airbus published Service Bulletin (SB) A300–53–6184 [dated November 12, 2015] to introduce inspections and applicable corrective actions for the affected areas.
>
> For the reason described above, this [EASA] AD requires repetitive Special Detail Inspections (SDI) of the affected skin lap joint and, depending on findings, accomplishment of applicable corrective action(s) [repairs].

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9051.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletin A300–53–6184, November 12, 2015. The service information describes procedures for an ultrasonic inspection of the skin lap joint below stringer 28 at FR 72 to FR 76, and repair if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 29 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Ultrasonic inspection	6 work-hours × $85 per hour = $510 per inspection cycle.	$510 per inspection cycle	$14,790 per inspection cycle.

We have no way to determine the costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these repairs.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;

2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–9051; Directorate Identifier 2016–NM–035–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Model A300 B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and A300 B4–622R airplanes; and Model A300 C4–605R Variant F airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by an in-service detection of cracks in the fuselage skin lap joints. We are issuing this AD to detect and correct cracks in the skin lap joint below stringer 28 at frame (FR) 72 to FR 76. Such cracking could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Before 29,500 flight cycles since the first flight of the airplane or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, do an ultrasonic inspection for cracks of the skin lap joint below stringer 28 at FR 72 to FR 76 and do all applicable repairs before further flight, in accordance with the Accomplishment Instruction of Airbus Service Bulletin A300–53–6184, November 12, 2015, except as required by paragraph (h) of this AD. Repeat the ultrasonic inspection thereafter at intervals not to exceed 5,400 flight cycles.

(h) Exceptions to Service Information Specified Paragraph (g) of This AD

Where Airbus Service Bulletin A300–53–6184, November 12, 2015, specifies to contact Airbus for repair instructions, and specifies that action as “RC” (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Brach, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149; email *dan.rodina@faa.gov.* Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (h) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0557, dated March 18, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9051.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20685 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9050; Directorate Identifier 2016–NM–086–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This proposed AD was prompted by widespread corrosion damage that was found on the skin inner surface along the upper bulkhead at certain stations between certain stringers. This proposed AD would require repetitive inspections of the fuselage crown skin inner surface, and related investigative and corrective actions if necessary. This AD would also allow for terminating actions for some of the repetitive inspections. We are proposing this AD to detect and correct cracks and corrosion on the crown skin inner surface. If the cracks or corrosion are not repaired, the cracks can rapidly join together and can cause a sudden decompression and loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9050.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9050; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9050; Directorate Identifier 2016–NM–086–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report indicating that operators have experienced widespread corrosion damage that was found on the skin inner surface along the upper bulkhead at station (STA) 1480 between stringers S–15L and S–16R, on the fuselage skin inner surface aft of the STA 1350 frame between stringers S–15 and S–16R and between stringers S–17 and S–18R, and on the skin inner surface aft of the STA 1283 frame between stringers S–5L and S–8L. This condition, if not corrected, could result in cracks that could rapidly join together and can cause a sudden decompression and loss of structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016. The service information describes procedures for inspecting the fuselage crown skin inner surface body at affected stations, and related investigative and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9050.

The phrase "related investigative actions" is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016, specifies to contact the manufacturer for certain instructions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 53 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Inspections and access	Up to 815 work-hours × $85 per hour = $69,275.	Up to $69,275	Up to $3,671,575.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs and on-condition inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repairs and on-condition inspections.	Up to 1,820 work-hours × $85 per hour = $154,700.	N/A	Up to $154,700.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9050; Directorate Identifier 2016–NM–086–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by widespread corrosion damage that was found on the skin inner surface along the upper bulkhead at certain stations between certain stringers. We are issuing this AD to detect and correct cracks and corrosion on the crown skin inner surface. If the cracks or corrosion are not repaired, the cracks can rapidly join together and can cause a sudden decompression and loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of the Skin Inner Surface

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016, except as required by paragraph (k)(1) of this AD: Do a detailed inspection of the skin inner surface for any missing or degraded finish, sign of corrosion, or crack, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016. Repeat the inspection thereafter at intervals not to exceed the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016, until the actions specified in paragraph (i) of this AD have been done.

(h) Repair of the Skin Inner Surface

If any damage is found during any inspection required by paragraph (g) of this AD, before further flight, do all applicable related investigative and correction actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016, except as required by paragraph (k)(2) of this AD.

(i) Terminating Action

Modification or repair of the inner skin surfaces in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2878, May 19, 2016, terminates the repetitive inspections required by paragraph (g) of this AD.

(j) Post Repair Inspection and Repairs

For airplanes on which a repair or modification has been done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016: Except as required by paragraph (k)(1) of this AD, at the applicable time specified in table 3 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016, do detailed inspections to detect damage of the repaired or modified areas, and do all applicable corrective actions, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2878, May 19, 2016, except as required by paragraph (k)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–53A2878, dated May 19, 2016.

(k) Exceptions

(1) Where Boeing Alert Service Bulletin 747–53A2878, May 19, 2016, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any cracking or corrosion is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2878, May 19, 2016, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking or corrosion using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (k)(1) and (k)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20683 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8849; Directorate Identifier 2015–NM–174–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A330–223F, –223, –321, –322, and –323 airplanes. The proposed AD was prompted by fatigue load analysis that determined the need for certain reduced inspection intervals and updated torque values of the forward mount pylon bolts. This proposed AD would require repetitive torque checks to determine if there are any loose or broken forward engine mount bolts, and, if necessary, replacement of all four forward engine mount bolts and associated nuts, inspection of the forward mount assembly, and repair. We are proposing this AD to detect and correct loose or broken bolts, which could lead to engine detachment in flight, and damage to the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8849; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2016–8849; Directorate Identifier 2015–NM–174–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 21, 2013, we issued AD 2013–14–04, Amendment 39–17509 (78 FR 68352, November 14, 2013) (“AD 2013–14–04”). AD 2013–14–04 requires actions intended to address the unsafe condition identified in this NPRM on all Airbus Model A330–223F, –223, –321, –322, and –323 airplanes.

Since we issued AD 2013–14–04, we have determined that it is necessary to update the torque values of the forward mount pylon bolts.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0214, dated October 19, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A330–223F, –223, –321, –322, and –323 airplanes. The MCAI states:

> The forward mount engine pylon bolts, Part Number (P/N) 51U615, fitted on Airbus A330 aeroplanes with Pratt & Whitney (PW) PW4000 engines, are made from MP159 material. Analysis made by PW identified that MP159 material pylon bolts do not meet the full life cycle torque check interval requirement, in a bolt-out condition. Consequently, PW issued Alert Service Bulletin (ASB) PW4G–100–A71–32, and the U.S. Federal Aviation Administration (FAA), as Engine Certification Authority, issued FAA AD 2006–16–05 [Amendment 39–14705 (71 FR 44185, August 4, 2006) (“AD 2006–16–05”)] to require repetitive torque checks of MP159 material forward mount pylon bolts fitted on certain PW4000 series engines.
>
> However, the engine mount system is considered to be part of aeroplane certification rather than the engine certification. Following further fatigue load analysis by Airbus of the A330 engine mount system, it was determined that the torque check interval for MP159 material forward mount pylon bolts, as required by FAA AD 2006–16–05 (2,700 flight cycles (FC)), provided an insufficient level of safety for Airbus A330 aeroplanes.
>
> This condition, if not detected and corrected, could ultimately lead to detachment of the engine from the aeroplane, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> Consequently, EASA issued AD 2012–0094 [which corresponds to FAA AD 2013–14–04] to require accomplishment of repetitive torque checks of the forward mount pylon bolts installed on affected A330 aeroplanes and, depending on findings, replacement of all four bolts and associated nuts, in accordance with PW ASB PW4G–100–A71–32 Revision 01 and Airbus Service Bulletin (SB) A330–71–3028.
>
> Since that AD was issued, it has been concluded that a new torque value must be applied.
>
> Consequently, Airbus issued SB A330–71–3028 Revision 02 and PW issued ASB PW4G–100–A71–32 Revision 02 to update the torque value. Additional forward mount inspections are also provided in case of one or more forward engine mount bolts is found loose, broken or missing.
>
> For the reasons described above, this AD retains the requirements of EASA AD 2012–0094, which is superseded, introduces a new torque value, and requires additional inspections and, depending on findings, corrective action(s).

Corrective actions include repetitive torque checks to determine if there are any loose or broken forward engine mount bolts on both engines, and, if necessary, replacement of all four forward engine mount bolts and associated nuts, inspection of the forward mount assembly, and repair. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8849.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A330–71–3028, Revision 02, dated August 31, 2015. The service information describes procedures for repetitive torque checks to determine if there are any loose or broken forward engine mount bolts on both engines, replacement of all four forward engine mount bolts and associated nuts, and inspection of the forward mount assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 41 airplanes of U.S. registry.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $6,747 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $287,082, or $7,002 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $6,747, for a cost of $6,832 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII:

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–8849; Directorate Identifier 2015–NM–174–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

This AD affects AD 2006–16–05, Amendment 39–14705 (71 FR 44185, August 4, 2006) (''AD 2006–16–05''); and AD 2013–14–04, Amendment 39–17509 (78 FR 68352, November 14, 2013) (''AD 2013–14–04'').

(c) Applicability

This AD applies to Airbus Model A330–223F, –223, –321, –322, and –323 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by fatigue load analysis that determined the need for certain reduced inspection intervals and updated torque values of the forward mount pylon bolts. We are issuing this AD to detect and correct loose or broken bolts, which could lead to engine detachment in flight, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Torque Check and Replacement

(1) At the applicable compliance time specified in table 1 to paragraph (g) of this AD, do a torque check to determine if there are any loose or broken forward engine mount bolts (4 positions/engine) on both engines, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–71–3028, Revision 02, dated August 31, 2015. Repeat the torque check at the applicable time intervals not to exceed the values specified in table 1 to paragraph (g) of this AD. For the purposes of this AD, the average flight time (AFT) is defined as a computation of the number of flight hours divided by the number of flight cycles accumulated since the most recent torque check or since the airplane's first flight, as applicable. Accomplishment of the initial torque check required by this AD terminates the requirements of AD 2013–14–05.

TABLE 1 TO PARAGRAPH (g) OF THIS AD

Airplane models	Flight cycles accumulated as of December 19, 2013 (the effective date of AD 2013–14–04), either since last torque check specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable	Compliance time	Torque check interval (not to exceed)
Model A330–321, –322, and –323 airplanes with AFT more than 132 minutes; and Model A330–223 airplanes.	0–1,850	Within 2,350 flight cycles since the last torque check as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable.	2,350 flight cycles or 24,320 flight hours, whichever occurs first.
Model A330–321, –322, and –323 airplanes with AFT more than 132 minutes; and Model A330–223 airplanes.	1,851–2,700	Within 500 flight cycles after December 19, 2013 (the effective date of AD 2013–14–04), without exceeding 2,700 flight cycles since last torque check as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable; or within 3 months after December 19, 2013; whichever occurs later.	2,350 flight cycles or 24,320 flight hours, whichever occurs first.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—Continued

Airplane models	Flight cycles accumulated as of December 19, 2013 (the effective date of AD 2013–14–04), either since last torque check specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable	Compliance time	Torque check interval (not to exceed)
Model A330–321, –322, and –323 airplanes with AFT 132 minutes or less; and Model A330–321, –322, and –323 airplanes on which the AFT is not calculated on a regular basis.	0–1,450	Within 1,950 flight cycles since the last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable.	1,950 flight cycles or 20,210 flight hours, whichever occurs first.
Model A330–321, –322, and –323 airplanes with AFT 132 minutes or less; and Model A330–321,–322, and –323 airplanes on which the AFT is not calculated on a regular basis.	1,451–2,700	Within 500 flight cycles after December 19, 2013 (the effective date of AD 2013–14–04), without exceeding 2,700 flight cycles since last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4–100–A71–32, or since airplane's first flight, as applicable; or within 3 months after December 19, 2013; whichever occurs later.	1,950 flight cycles or 20,210 flight hours, whichever occurs first.
Model A330–223F airplanes.	Any	Within 2,140 flight cycles or 6,600 flight hours, whichever occurs first since the last torque check performed as specified in Pratt & Whitney Alert Service Bulletin PW4G–100–A71–32, or since airplane's first flight, as applicable.	2,140 flight cycles or 6,600 flight hours, whichever occurs first.

(2) If any loose or broken bolt is detected during the check required by paragraph (g)(1) of this AD, before further flight, do the actions specified by paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–71–3028, Revision 02, dated August 31, 2015; except, where the service information specifies to contact the manufacturer for further actions, this AD requires repair before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) Replace all four forward engine mount bolts and associated nuts, on the engine where the loose or broken bolt was detected, with new bolts and nuts.

(ii) Do nondestructive inspections of the forward mount assembly for damage including cracks, dents, nicks, and scratches, and do all applicable corrective actions.

(3) Replacement of bolts and nuts as required by paragraph (g)(2)(i) of this AD is not terminating action for the repetitive torque checks required by paragraph (g)(1) of this AD.

(h) Provisions for Compliance With AD 2006–16–05

Accomplishment of the actions required by paragraph (g) of this AD constitutes compliance with the requirements specified in paragraph (g) of AD 2006–16–05.

(i) Parts Installation Prohibition

As of December 19, 2013 (the effective date of AD 2013–14–04), no person may install any INCO718 material, forward mount pylon bolt having Pratt & Whitney part number 54T670 on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g)(1) and (g)(2)(i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–71–3028, dated December 16, 2011, or Airbus Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. This service information is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (g)(2) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) 2015–0214, dated October 19, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8849.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email:

airworthiness.A330-A340@airbus.com; Internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-20681 Filed 8-29-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2016-9054; Directorate Identifier 2016-NM-081-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC-8-400 series airplanes. This AD was prompted by reports of interior emergency lights remaining "ON" following routine operational checks of the emergency light system. We are proposing this AD to require changing the wiring gauge for the affected emergency lights power supplies wiring to prevent overheating in the wires. Overheating can damage the wire insulation, causing a fire.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA-2016-9054; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE-172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7301; fax 516-794-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2016-9054; Directorate Identifier 2016-NM-081-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2016-12, dated May 11, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model DHC-8-400 series airplanes. The MCAI states:

> There have been several reports of Interior Emergency Lights remaining "ON" following routine operational checks of the Emergency Light System. During these events, the system could not be deactivated and the associated circuit breaker was also found tripped. The events were caused by the overheating of the negative interlock and ground wires at the Emergency Light System Power Supplies.
>
> Investigation has determined that the wire gauge of the negative interlock and ground wiring is incompatible with the current load experienced during the Emergency Light System operational check and this has led to the degradation of the wiring insulation.
>
> This [Canadian] AD is being issued to mandate the change of the wiring gauge from 22 to 20 American wire gauge (AWG) for the affected Emergency Lights Power Supplies wiring.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA-2016-9054.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 84-33-12, Revision A, dated January 19, 2016. This service information describes procedures for changing the wiring gauge for the affected emergency lights power supplies wiring to prevent overheating in the wires. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 52 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	8 work-hours × $85 per hour = $680.	Supplied from operator stock	$680	$35,360

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2016–9054; Directorate Identifier 2016–NM–081–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, and 4003 through 4507 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 33, Lights.

(e) Reason

This AD was prompted by reports of interior emergency lights remaining "ON" following routine operational checks of the emergency light system. We are issuing this AD to prevent overheating in the wires. Overheating can damage the wire insulation, causing a fire.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement of Affected Wires

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, incorporate Bombardier Modsum 4–126620 to change the wire gauge, in accordance with Bombardier Service Bulletin 84–33–12, Revision A, dated January 19, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–33–12, dated September 29, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2016–12, dated May 11, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9054.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20691 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8848; Directorate Identifier 2016–NM–054–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–300, –400, and –500 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin is subject to widespread fatigue damage (WFD). This proposed AD would require modification of the lap joint, including related investigative actions and corrective actions if necessary. This proposed AD also would require repetitive post-modification inspections for cracking of the skin at critical fastener rows, and corrective actions if necessary. We are proposing this AD to detect and correct cracks at the lap joint skin that could link up and result in rapid decompression and loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8848.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8848; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430, fax: 425–917–6590; email: *wade.sullivan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8848; Directorate Identifier 2016–NM–054–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We have received a report indicating that a Model 737–300 series airplane with 20-inch spaced tear strap crown skin configuration experienced a rapid decompression when the lap joint at stringer S–4L between station (STA) 664 and STA 727 cracked and opened up. Investigation shows that the cracks were caused by fatigue cracks in the lower skin at the lower row of fasteners in the S–4L lap joint. The airplane had accumulated 39,781 total flight cycles and 48,740 total flight hours. This condition, if not corrected, could result in rapid decompression and loss of structural integrity.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016. The service information describes procedures for modification of the lap joint, including related investigative actions and corrective actions if necessary. The service information also describes procedures for post-modification inspections for cracking of the skin at critical fastener rows, and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8848.

The phrase "related investigative actions" is used in this proposed AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–53A1343, date March 25, 2016, specifies to contact the manufacturer for certain instructions, but this proposed AD would require accomplishment of repair methods, modification deviations, and alteration deviations in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 115 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Lap joint skin modification	2,142 work-hours × $85 per hour = $182,070 per modification.	$12,500	$194,570	$22,375,550.
Post-Modification inspection	102 work-hours × $85 per hour = $8,670 per inspection cycle.	$0	$8,670 per inspection cycle	$997,050 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–8848; Directorate Identifier 2016–NM–054–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

This AD affects AD 2015–16–08, Amendment 39–18233 (80 FR 51450, August 25, 2015) ("AD 2015–16–08").

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016; except for Group 5 airplanes identified in Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin is subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct cracks at the lap joint skin that could link up and result in rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Lap Joint Skin Modification

Before the accumulation of 50,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the lap joint skin, including doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016, except as required by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Inspection of the Critical Fastener Rows

Within 38,000 flight cycles after modifying the lap joint skin as required by paragraph (g) of this AD: Inspect the skin at critical fastener rows by doing the actions specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016. If any crack is found during any inspection, repair before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles in unrepaired areas.

(1) From the inside of the airplane: Do a low frequency eddy current (LFEC) inspection for any crack in the skin at the critical fastener row, and a medium frequency eddy current (MFEC) inspection for any crack in the skin at the critical fastener row.

(2) From the outside of the airplane: Do a LFEC inspection for any crack in the fuselage skin.

(i) Exception to Service Information Specifications

Although Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016, specifies to contact Boeing for repair instructions, and specifies that action as "RC" (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) AD Provisions for Part 26 Supplemental Inspections

Table 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1343, dated March 25, 2016, specifies post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(k) Terminating Action for AD 2015–16–08

Accomplishing the modification required by paragraph (g) of this AD terminates the inspections required by paragraphs (g), (h), (i), (j), and (k) of AD 2015–16–08 for the modified area only.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(4)(i) and (l)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(m) Related Information

(1) For more information about this AD, contact Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430, fax: 425–917–6590; email: *wade.sullivan@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 16, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20673 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9053; Directorate Identifier 2016–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–8 and 747–8F series airplanes. This proposed AD was prompted by reports of damaged vapor seals, block seals, and heat shield seals on the outboard pylons between the engine strut and aft fairing. This proposed AD would require repetitive inspections for heat damage of the vapor seals between the engine strut and aft fairing, and replacement of the seals with new seals if necessary. We are proposing this AD to detect and correct heat damage to the vapor seals between the engine strut and aft fairing. Such damage could allow flammable fluid leakage into the aft fairing, which could result in an uncontrolled fire in the engine strut.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9053.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9053; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9053; Directorate Identifier 2016–NM–075–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of damaged vapor seals, block seals, and heat shield seals on the outboard pylons between the aft fairing and engine strut on the number 1 and number 4 engines. The reports indicate that vapor seal damage occurring on the outboard pylons at 1,468 flight cycles, fully compromised the vapor seals at 2,768 flight cycles and 3,626 flight cycles. It was determined that this condition affects only the outboard pylons because the vapor seal is located directly above the heat shield seal in these pylons. Heat from the exhaust nozzle to the vapor seal damages the seal and degrades the sealing quality. The vapor seal is a safety feature that is designed to isolate flammable hydraulic fluid from an ignition source. If the vapor seal has heat damage and there is a hydraulic leak that sprays onto the strut bulkhead, fluid could drain across the worn seal and contact heat shield surfaces below the seals. Flammable fluid leakage into the aft fairing could result in an uncontrolled fire in the engine strut.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–54A2246, dated February 5, 2016. The service information describes procedures for repetitive inspections for heat damage of the vapor seals between the engine strut and aft fairing, and replacement of the seals with new seals. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9053.

Difference Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–54A2246, dated February 5, 2016, recommends accomplishment of Part 4, "Structural Inspection and Repair for Heat Damage" (economic related), during accomplishment of Part 3, "Seal Replacement" (safety related), before installation of new seals. Part 4 is included as an economic consideration to prevent possible operational disruptions. However, this NPRM would not require those structural inspections.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 10 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Vapor seal inspections	4 work-hours X $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle.	$3,400 per inspection cycle

We estimate the following costs to do any necessary seal replacement that would be required based on the results of the proposed vapor seal inspection. We have no way of determining the number of aircraft that might need these seal replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Seal replacement	132 work-hours × $85 per hour = $11,220	$0	$11,220

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–9053; Directorate Identifier 2016–NM–075–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–8 and 747–8F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 54 Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of damaged vapor seals, block seals, and heat shield seals on the outboard pylons between the engine strut and aft fairing. We are issuing this AD to detect and correct heat damage to the vapor seals between the engine strut and aft fairing. Such damage could allow flammable fluid leakage into the aft fairing, which could result in an uncontrolled fire in the engine strut.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Do a detailed inspection for heat damage of the vapor seals on the outboard pylons between the strut and aft fairing of the numbers 1 and 4 engines, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2246, dated February 5, 2016. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

(i) Before the accumulation of 1,800 total flight cycles, or within 1,800 flight cycles after the most recent vapor seal, block seal, and heat shield seal replacement, whichever is later.

(ii) Within 6 months after the effective date of this AD.

(h) Replacement

If during any inspection required by paragraph (g) of this AD any heat damage of any vapor seal is found: Before further flight, replace the vapor seal, heat shield seal, and block seal with new seals, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2246, dated February 5, 2016. Repeat the inspection required by paragraph (g) of this AD within 1,800 flight cycles after doing the replacement, and thereafter at intervals not to exceed 1,200 flight cycles.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (i)(4)(i) and (i)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(j) Related Information

(1) For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20667 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9052; Directorate Identifier 2016–NM–080–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This proposed AD was prompted by reports of failure of an aft hinge bolt assembly in the nose landing gear (NLG) aft doors. This proposed AD would require replacement of the aft hinge bolt assembly in the left and right NLG aft doors, with new aft hinge bolt assemblies. We are proposing this AD to prevent failure of an aft hinge bolt assembly in an NLG aft door while the airplane is in flight, which could lead to an in-flight loss of an NLG aft door, and damage to the airplane.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9052; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–9052; Directorate Identifier 2016–NM–080–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0100, dated May 24, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The MCAI states:

> An occurrence has been reported of failure of a nose landing gear (NLG) door aft hinge bolt assembly, Part Number (P/N) A53612600000. The result of laboratory investigations revealed that the aft hinge bolt rupture was initiated by fatigue crack development in the under head radius of the bolt, due to the lack of radius roll over and in combination with a non-optimised design.
>
> This condition, if not detected and corrected, could lead to in-flight loss of an aft NLG door, possibly resulting in damage to the aeroplane and injury to persons on the ground.
>
> Prompted by these findings, Airbus developed a new design aft hinge bolt assembly P/N A53612713000, introduced as Airbus modification (mod) 13741, to replace the existing bolt P/N A53612600000. Since the introduction of that mod, additional stress calculations demonstrated that the new bolt assembly, P/N A53612713000, cannot sustain fatigue loads up to the design Limit of Validity (LOV) of the affected aeroplanes.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A300–53–0397, SB A310–53–2144 and SB A300–53–6186, to provide instructions for the repetitive replacement of the affected post-mod 13741 P/N A53612713000 aft hinge bolts.
>
> For the reasons described above, this [EASA] AD requires the replacement of all P/N A53612600000 aft hinge bolt assemblies, installed on the left hand (LH) and right hand (RH) NLG aft doors, with post-mod 13741 P/N A53612713000 aft hinge bolt assemblies, and, subsequently, the implementation of a life limit for those new bolt assemblies.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9052.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A300–53–0396, dated November 25, 2015.
- Airbus Service Bulletin A300–53–0397, dated January 18, 2016.
- Airbus Service Bulletin A300–53–6182, dated November 17, 2015.
- Airbus Service Bulletin A300–53–6186, dated January 18, 2016.
- Airbus Service Bulletin A310–53–2142, dated November 17, 2015.
- Airbus Service Bulletin A310–53–2144, dated January 18, 2016.

The service information describes procedures for replacement of the aft hinge bolt assembly in the left and right NLG aft doors, with new aft hinge bolt assemblies.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 157 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	9 work-hours × $85 per hour = $765	$2,000	$2,765	$434,105

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–9052; Directorate Identifier 2016–NM–080–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus airplanes identified in paragraphs (c)(1) through (c)(6) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A300 C4–605R Variant F airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of failure of an aft hinge bolt assembly in the nose landing gear (NLG) aft doors. We are issuing this AD to prevent failure of an aft hinge bolt assembly in an NLG aft door while the airplane is in flight, which could lead to an in-flight loss of an NLG aft door, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replace the Aft Hinge Bolt Assemblies Having Part Number (P/N) A53612600000

Before the accumulation of 10,000 total flight cycles since first flight of the airplane, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, replace each aft hinge bolt assembly having P/N A53612600000 on the left and right NLG aft doors, with a new hinge bolt assembly having P/N A53612713000, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Airbus Service Bulletin A300–53–0396, dated November 25, 2015.

(2) Airbus Service Bulletin A310–53–2142, dated November 17, 2015.

(3) Airbus Service Bulletin A300–53–6182, dated November 17, 2015.

(h) Replace the Aft Hinge Bolt Assemblies Having P/N A53612713000

Within 10,000 flight cycles after modification of an airplane as required by paragraph (g) of this AD, replace each aft hinge bolt assembly having P/N A53612713000 on the left and right aft NLG doors, with a new aft hinge bolt assembly having P/N A53612713000 on the left and right NLG aft doors, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Repeat the replacement thereafter at intervals not to exceed 10,000 flight cycles.

(1) Airbus Service Bulletin A300–53–0397, dated January 18, 2016.

(2) Airbus Service Bulletin A310–53–2144, dated January 18, 2016.

(3) Airbus Service Bulletin A300–53–6186, dated January 18, 2016.

(i) Parts Installation Prohibition (P/N A53612600000)

After modification of an airplane NLG aft door as required by paragraph (g) of this AD, do not install an aft hinge bolt assembly having P/N A53612600000 on any NLG aft door of that airplane.

(j) Parts Installation Limitation (P/N A53612713000)

After removal of an aft hinge bolt assembly having P/N A53612713000 from an airplane aft NLG door, as required by paragraph (h) of this AD, do not install an aft hinge bolt assembly having that part number on any airplane unless it is a new aft hinge bolt assembly.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0100 dated May 24, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9052.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 19, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20699 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0923; Directorate Identifier 2014–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), which would have applied to certain The Boeing Company Model 737–700, –800, and –900ER series airplanes. The NPRM would have required repetitive inspections to detect cracking in the crown skin panel assembly. The NPRM would also have provided optional terminating action for the repetitive inspections. Since the NPRM was issued, all affected airplanes worldwide have had applicable terminating actions accomplished, and one airplane was mistakenly included in the applicability. Accordingly, the NPRM is withdrawn.

DATES: As of August 30, 2016, the proposed rule, which was published in the **Federal Register** on December 15, 2014 (79 FR 74032), is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0923; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the NPRM (79 FR 74032, December 15, 2014), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone: 800–647–5527) is the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gaetano Settineri, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *gaetano.settineri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a NPRM for a new AD for certain The Boeing Company Model 737–700, –800, and –900ER series airplanes. The NPRM published in the **Federal Register** on December 15, 2014 (79 FR 74032) ("the NPRM"). The NPRM would have required repetitive inspections to detect cracking in the crown skin panel assembly. The NPRM would also have provided optional terminating action for the repetitive inspections. The NPRM was prompted by reports of troughs in the skin along the chem-mill pocket edges of certain fuselage crown skin panel assemblies. The proposed actions were intended to detect and correct cracking from troughs in the chem-mill pocket edges, which could lead to rapid decompression of the airplane.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have determined that all affected airplanes worldwide have had applicable terminating actions accomplished, and one airplane had been included mistakenly in the applicability. The unsafe condition identified in the NPRM was created due to a production escapement and was limited to 11 airplanes. However, the affected airplanes have all been inspected for the unsafe condition and in instances where the unsafe condition was present, the discrepant parts were replaced with conforming parts. With the discrepant parts replaced, the unsafe condition no longer exists.

Comments

We gave the public the opportunity to participate in considering the NPRM. Two commenters, Boeing and Aviation Partners Boeing, requested certain changes to the NPRM that are considered moot by this withdrawal.

FAA's Conclusions

Upon further consideration, we have determined that the unsafe condition described in the NPRM no longer exists. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2014–0923, Directorate Identifier 2014–NM–176–AD, which was published in the **Federal Register** on December 15, 2014 (79 FR 74032).

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20704 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8850; Directorate Identifier 2016–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–200 and –300 series airplanes. This proposed AD was prompted by a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. This proposed AD would require replacing the cargo compartment insulation blankets on the left and right sides with new insulation blankets that incorporate fire stops. We are proposing this AD to prevent a fire in the bilge area of the cargo compartment burning through the insulation blankets and consequently allowing smoke to migrate behind the cargo compartment sidewall liners and upward into the main cabin.

DATES: We must receive comments on this proposed AD by October 14, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial

Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8850.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8850; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8850; Directorate Identifier 2016–NM–031–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. The airplane was delivered with a partial floor configuration in the cargo compartment, and later modified into a full floor configuration. This event showed that the insulation blankets installed are not adequate to prevent fire in the bilge area from migrating past the cargo compartment sidewall liners and allowing smoke into the main cabin. We have determined that some airplanes with the full floor configuration in the cargo compartment did not receive the insulation blankets with fire stops. This condition, if not corrected, could result in a fire in the bilge area of the cargo compartment burning through the insulation blankets, which could result in smoke migrating behind the cargo compartment sidewall liners and upward into the main cabin.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015. The service information describes procedures for replacing the cargo compartment insulation blankets on the left and right sides between stringers 29 and 33 with new insulation blankets that incorporate fire stops. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8850.

Costs of Compliance

We estimate that this proposed AD affects 26 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	Up to 54 work-hours × $85 per hour = $4,590.	(1)	Up to $4,590.	Up to $119,340.

[1] We have received no definitive data that would enable us to provide parts cost estimates for the actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–8850; Directorate Identifier 2016–NM–031–AD.

(a) Comments Due Date

We must receive comments by October 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 25; Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report of a fire in the bilge area of the cargo compartment that burned through the insulation blankets that were intended to prevent smoke from migrating behind the cargo compartment sidewall liners and upward into the main cabin. We are issuing this AD to prevent a fire in the bilge area of the cargo compartment burning through the insulation blankets and consequently allowing smoke to migrate behind the cargo compartment sidewall liners and upward into the main cabin.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Insulation Blanket Replacement

Within 36 months after the effective date of this AD: Replace the cargo compartment insulation blankets on the left and right sides between stringers 29 and 33 with new insulation blankets that incorporate fire stops, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015. For Groups 1 through 4, Configurations 1 and 2 airplanes identified in Boeing Special Attention Service Bulletin 767–25–0550, dated January 30, 2015, no action is required by this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Control Systems, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20676 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 165

RIN 3038–AE50

Whistleblower Awards Process

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend its regulations to enhance the process for reviewing whistleblower claims and to make related changes to clarify staff authority to administer the whistleblower program. The Commission also is reinterpreting its anti-retaliation authority and proposing appropriate rule amendments to implement that authority.

DATES: Comments must be received on or before September 29, 2016.

ADDRESSES: You may submit comments, identified by RIN 3038–AE50, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act ("FOIA"), a petition for confidential treatment of the exempt information may be submitted according to the procedure established in § 145.9 of the Commission's FOIA regulations (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Anthony Hays, Counsel, (202) 418–5584, *ahays@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

In 2011, the Commission adopted its part 165 regulations, which implement section 23 of the Commodity Exchange Act ("CEA"), 7 U.S.C. 26, by establishing a regulatory framework for the whistleblower program. *See* Whistleblower Incentives and Protection, 76 FR 53172 (August 25, 2011). Part 165 provides for the payment of awards, subject to certain limitations and conditions, to whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of an action brought by the Commission that results in monetary sanctions exceeding $1,000,000 ("Covered Action"), or the successful enforcement of a related action, as that term is defined in the rules, or both.

The award amount must be between 10 and 30 percent of the amount of monetary sanctions collected in a Covered Action or a related action and is paid from the CFTC Customer Protection Fund. The Commission has discretion regarding the amount of an award based on the significance of the information, the degree of assistance provided by the whistleblower, and other criteria.

Since the whistleblower program was established in 2011, the need for certain improvements has become apparent. As explained further below, this rulemaking proposal addresses that need with targeted revisions to the claims review process and to the authority of staff to administer the whistleblower program. The Commission also is reinterpreting its anti-retaliation authority under CEA section 23(h)(1) and proposing rule amendments to implement that authority. Finally, the Commission is proposing to amend its rules to permit whistleblowers to receive awards based on both Covered Actions and the successful enforcement of related actions, as defined in the rules.

II. Proposed Amendments

The Commission proposes to make targeted changes to the process for reviewing whistleblower award claims. In considering what changes to make, the Commission has been informed by its experience since the inception of its program, as well as the experience of the Securities and Exchange Commission ("SEC") in the administration of its whistleblower program. In many ways, the SEC program is similar to the Commission's. Both were created under the Dodd-Frank Act,[1] although the SEC also had prior experience in administering its insider trading bounty program.[2] The Commission believes that these proposed amendments will, among other things, significantly improve the administration of its review process.

Eligibility Requirements for Consideration of an Award

Currently, § 165.5 specifies the requirements for consideration of an award by the Commission. The Commission proposes to revise this rule to make clear that a claimant may receive an award in a Covered Action, in a related action, or both. The Commission also proposes to make clear that a claimant may be eligible for an award by providing the Commission original information without being the original source of the information. In addition, based on its experience in administering the whistleblower program, the Commission proposes to revise the definition of "original source" in § 165.2(l) to extend the timeframe from 120 to 180 days that a whistleblower has to file a Form TCR pursuant to § 165.3 after previously providing the same information to Congress, any other federal or state authority, a registered entity, a registered futures association, a self-regulatory organization, or to any of the persons described in § 165.2(g)(4) and (5). Finally, in § 165.5(c), the Commission is providing notice that it has discretion to waive procedural rules based upon a showing of extraordinary circumstances.

Award Claims Review Under § 165.7

Currently, § 165.7(d) provides for the review of whistleblower award claims. The Commission proposes to revise this rule in order to better define and specify each step in the award review process. Those steps are spelled out in proposed new paragraphs (f) through (l), along with new provisions regarding withdrawing award applications in proposed paragraph (d) and disposition of claims that do not relate to Notices of Covered Actions ("NCAs") or final judgments in related actions in proposed new paragraph (e). These amendments would establish a review process similar to that established under the SEC's whistleblower rules. *See* 17 CFR 240.21F–10(d) through (h) (2014). Specifically, the Commission has proposed to discontinue the Whistleblower Award Determination Panel and replace it with a review process handled by a Claims Review Staff designated by the Director of the Division of Enforcement in consultation with the Executive Director.[3] The Commission expects that the Claims Review Staff will be assisted by the Whistleblower Office staff within the Division of Enforcement.[4] The proposed rules also provide an additional means for the submission of the required Form WB–APP, Application for Award for Original Information Provided Pursuant to section 23 of the Commodity Exchange Act, in § 165.7(b)(1); explain the deadline for filing Form WB–APP under different timing scenarios for final judgments in covered judicial or administrative actions and related actions in proposed § 165.7(b)(3); and, make a conforming change by renumbering prior paragraph (e) in § 165.7 as paragraph (l).

---

[1] Section 922 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 by adding section 21F, which provides for the SEC's whistleblower program. Similar to the CFTC program, the SEC program authorizes monetary awards to eligible individuals who voluntarily provide original information that leads to successful SEC enforcement actions resulting in the imposition of monetary sanctions over $1,000,000 and certain related successful actions. The SEC can make awards ranging from 10 to 30 percent of the monetary sanctions collected, which are paid from its Investor Protection Fund.

Section 924(d) of the Dodd-Frank Act directed the SEC to establish a separate office to administer the whistleblower program. In February 2011, the SEC established the Office of the Whistleblower within the Division of Enforcement to carry out this mandate.

[2] This SEC program was established in 1989 under Section 21A(e) of the Securities Exchange Act of 1934, which authorized the SEC to award a bounty to a person who provided information leading to the recovery of a civil penalty from an insider trader or related parties. Section 21A(e) was enacted in 1988 as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 and was repealed in 2010 by section 923(b) of the Dodd-Frank Act.

The SEC abolished its bounty program when it established its whistleblower program under the Dodd-Frank Act.

New proposed § 165.7(e) addresses the Commission's experience of receiving a number of Form WB–APPs that appear to be unrelated to NCAs or final judgments in related actions as well as Form WB–APPs that do not relate to a previously filed Form TCR. In order to reduce the administrative burden on the Commission, the Commission proposes that such facially ineligible claims primarily be handled by the Whistleblower Office. The Whistleblower Office will notify the claimant of the deficiencies in the Form WB–APP and provide an opportunity for the claimant to correct the deficiencies or withdraw the claim before the finalization of the denial of the claim. If the claimant does not correct the deficiencies or withdraw the claim, the Whistleblower Office will notify the Claims Review Staff of the proposed denial, which will be called a Proposed Final Disposition, and any member of the Claims Review Staff will have the opportunity to request review of the proposed denial. If no member of the Claims Review Staff requests review, the Proposed Final Disposition will become the final order of the Commission. If a member of the Claims Review Staff requests review, the Claims Review Staff will review the record for the denial and either remand to the Whistleblower Office for further action or issue a final order of the Commission, which consists of the proposed denial. Additionally, proposed § 165.7(d) would permit a claimant to withdraw an award application at any point in the review process by submitting a written request to the Whistleblower Office.[5]

Under proposed § 165.7(f),[6] the Claims Review Staff will evaluate all timely award applications submitted on a Form WB–APP in response to the NCA or a final judgment in a related action.[7] During the review process, the Whistleblower Office may require that claimants provide additional information, explanation, or assistance as set forth in § 165.5(b)(3). For award claims on related actions, as described in § 165.7(f), the Whistleblower Office may request additional information from the claimant to demonstrate that the claimant voluntarily provided the governmental agency, regulatory authority, or self-regulatory organization the same original information that led to the Commission's successful enforcement action and the successful enforcement of the related action. The Whistleblower Office may also seek assistance and confirmation from the other agency in making this determination.

Under proposed § 165.7(g)(1), following the initial evaluation by the Claims Review Staff, the Claims Review Staff will issue a Preliminary Determination setting forth a preliminary assessment as to whether the claim should be granted or denied and, if granted, setting forth the proposed award percentage amount. The Whistleblower Office will send a copy of the Preliminary Determination to the claimant. The proposed amendments would allow a claimant the opportunity to contest the Preliminary Determination.[8]

Under new proposed § 165.7(g)(2), the claimant could take any of the following steps in response to a Preliminary Determination:

- Within thirty (30) calendar days of the date of the Preliminary Determination, the claimant may request that the Whistleblower Office make available for the claimant's review the materials that formed the basis of the Claim Review Staff's Preliminary Determination.
- Within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made, then within sixty (60) days of the Whistleblower Office making those materials available for the claimant's review, a claimant may submit a written response setting forth the grounds for the claimant's objection to either the denial of an award or the proposed amount of an award. The claimant may also include documentation or other evidentiary support for the grounds advanced in any response, and request a meeting with the Whistleblower Office. However, such meetings would not be required. The Whistleblower Office may in its sole discretion decline the request.

New proposed § 165.7(h) makes clear that if a claimant fails to submit a timely response under new § 165.7(g), then a Preliminary Determination denying an award becomes the Final Order of the Commission and constitutes a failure to exhaust the claimant's administrative remedies.[9] Failure to exhaust administrative remedies would prohibit the claimant from pursuing judicial review.

If the claimant fails to contest a Preliminary Determination recommending an award, the Preliminary Determination would be treated as a Proposed Final Determination, which would make it subject to Commission review under proposed § 165.7(j).

New § 165.7(i) describes the procedure in cases where a claimant submits a timely response under new

---

[3] Designation and composition of the Claims Review Staff is described in proposed § 165.15(a)(2).

[4] The Commission expects that the Whistleblower Office will provide assistance to the Claims Review Staff in the form of analysis of a claimant's eligibility and, if applicable, a recommendation of a proposed award amount. Any such assistance provided by the Whistleblower Office to the Claims Review Staff will be prepared exclusively to assist the Claims Review Staff in deciding a claim and will be deliberative process materials that will not be available to claimants under § 165.10 or part of the record on appeal under § 165.13. The proposed rules contain clarifying changes to these rules.

[5] A claimant may choose to withdraw a claim for any reason including that it was filed erroneously. An example would be if a claimant intended to submit a tip via a Form TCR but mistakenly submitted a claim via a WB–APP. The proposed addition to § 165.7(d) would allow the claimant to withdraw the WB–APP and file a Form TCR.

[6] Proposed § 165.7(f) is a revised version of current § 165.7(d).

[7] The Whistleblower Office will not post any notices for related actions. It will be the claimant's responsibility to track the progress and final resolution of any related action and to file a claim with the Commission under § 165.7(b).

[8] If a claimant has no objection to the Preliminary Determination, the claimant could inform the Whistleblower Office of the decision not to contest within the 60 calendar days after issuance of the Preliminary Determination. This situation might occur when the Preliminary Determination recommends an award and the claimant has no objection to the recommended amount of the award.

[9] Pursuant to § 165.7(l), the Office of the Secretariat will serve on the claimant a copy of the Final Order.

§ 165.7(g). In such cases, the Claims Review Staff would consider the issues raised in the claimant's response, along with any supporting documentation that the claimant provides, and prepare a Proposed Final Determination.

Under new § 165.7(j), when there is a Proposed Final Determination, the Whistleblower Office will notify the Commission of the Proposed Final Determination. Within thirty (30) days of that notification, any Commissioner may request Commission review of the Proposed Final Determination. If no Commissioner makes such a request, the Proposed Final Determination will become the Commission's Final Order. If a Commissioner does request review, the Commission will review the record that the Claims Review Staff relied upon in reaching its determination. On the basis of its review of that record, the Commission will issue its Final Order, which the Office of the Secretariat will then serve on the claimant. In reaching their decisions, the Commission and Claims Review Staff will only consider information in the record.

The Office of General Counsel will review both preliminary and proposed final determinations prior to issuance, and no such determination may be issued without the Office of General Counsel's determination of legal sufficiency.

Under proposed § 165.15(a)(2), the Enforcement Director, in consultation with the Executive Director, will designate a minimum of three and a maximum of five staff from the Division of Enforcement or other Commission Offices or Divisions to serve on the Claims Review Staff, either on a case-by-case basis or for fixed periods. At least one person from outside the Division of Enforcement will be included on the Claims Review Staff at all times. The Claims Review Staff would be composed only of persons who have not had direct involvement with the underlying enforcement action. Due to the Office of General Counsel's role in the review process, the Commission believes it is appropriate to exclude staff from that Office from serving as Claims Review Staff.

These proposed amendments would provide the public and claimants with greater transparency in the award evaluation and review process. They should also enhance the expeditious and fair administration of the program.

Awards for Related Actions

For award claims on related actions, the Commission is proposing to amend § 165.11 to permit claimants who are eligible to receive an award in a covered judicial or administrative action also to receive an award based on the monetary sanctions that are collected from a final judgment in a related action. The exception would be that the Commission would not make an award to a claimant for a related action if the claimant had been granted an award by the SEC for the same action under the SEC's whistleblower program. This would prevent a claimant from "double dipping" and receiving more than one award for the same action. Similarly, if the SEC has previously denied an award to a claimant in a related action, the claimant will be precluded from relitigating any issues before the Commission that the SEC resolved against the claimant as part of the SEC's award denial. These limitations on obtaining an award for both Covered Actions and final judgments in related actions are similar to those imposed by the SEC in its whistleblower program.

Pursuant to the definition of related action in § 165.2(m), a related action is based on the original information voluntarily submitted by a whistleblower to the Commission that led to the successful enforcement of a Commission action, and therefore, an action may only become a "related action" after there is a successful Commission action. Additional revisions are proposed to § 165.7(b) to clarify timing requirements for filing whistleblower award claims regarding related actions. The proposed revisions also clarify that except in the circumstances described in proposed § 165.7(b)(3)(ii), award claims for a related action shall be filed within 90 days after an action meets the definition of related action if the order in the related action was issued prior to the successful enforcement of a Commission action. The proposed revisions also clarify that award claims for a related action and in response to a Notice of Covered Action may be submitted on the same Form WB–APP in certain circumstances.

Contents of Record for Award Determinations

Consistent with the Commission proposing to amend § 165.11 to permit claimants who are eligible to receive an award in a covered judicial or administrative action also to receive an award based on the monetary sanctions that are collected from a final judgment in a related action, the Commission proposes to amend § 165.10(a) to include additional items that may be included in the contents of record for award claims. For related actions, any documents or materials, including sworn declarations from third parties, that are received or obtained by the Whistleblower Office to assist the Commission in resolving the claimant's award application, including information relating to the claimant's eligibility, may be included in the record. In addition, any information provided to the Commission by the entity bringing the related action that has been authorized by the entity for sharing with the claimant may be part of the record. Neither of these forms of information may be included in the contents of the record if the entity did not authorize the Commission to share the information with the claimant. The Commission also proposes revisions to §§ 165.10(b) and 165.13(b) to clarify that the record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared to assist the Commission or Claims Review Staff in deciding a claim.

Authority To Administer the Program

Currently, § 165.15 provides for delegations of authority to the staff. Given the proposed changes to the claims review process, the Commission proposes to directly assign responsibilities for administering the program by rule rather than by delegation. Since 2013, the Whistleblower Office ("WBO") has been located within the Division of Enforcement. The Commission believes that it is appropriate to assign overall responsibility for administering the whistleblower program to the Director of the Division of Enforcement. The Commission notes that this approach is also consistent with the SEC's practice.

The Commission also proposes to directly assign responsibility to Claims Review Staff for the issuance of Preliminary Determinations and Proposed Final Determinations, and issuance of Proposed Final Dispositions to the WBO. In this connection, the Commission proposes, again consistent with the SEC's practice, that no member of the Claims Review Staff can have had any direct involvement in the underlying enforcement case.

Whistleblower Identifying Information

To implement the confidentiality protection for whistleblower identifying information under CEA section 23(h)(2), the Commission issued § 165.4. The Commission is proposing to authorize the Director of the Division of Enforcement to act on its behalf to disclose whistleblower identifying information as permitted by CEA section 23(h)(2)(C) and § 165.4(a)(2) and (3). Under § 165.15(a)(3), the Commission expects the Director of Enforcement to exercise this discretion to release such sensitive information in a manner consistent with, and when deemed necessary or appropriate to accomplish, the customer protection and law enforcement goals of the whistleblower program.[10] The Commission believes that this delegation of authority will increase investor protection by facilitating administration of the whistleblower program as well as investigations and actions by those agencies and authorities that are eligible to receive whistleblower identifying information under CEA section 23(h)(2)(C) and § 165.4. Any agency or authority that receives whistleblower identifying information is bound by the same confidentiality requirements as those applicable to the Commission under CEA section 23(h)(2)(A) and such release of information does not change the confidential nature of the information. Certain information provided to other agencies or authorities is also protected from disclosure under CEA section 8.

Retaliation Against Whistleblowers

During its 2011 rulemaking, the Commission was asked to clarify its enforcement authority over retaliation against whistleblowers. Citing the private right of action for whistleblowers created by CEA section 23(h)(1)(B), the Commission stated that it lacked "the statutory authority to conclude that any entity that retaliates against a whistleblower" could be subject to enforcement action "as a separate and independent violation of the CEA." Whistleblower Incentives and Protection, 76 FR at 53182 (August 25, 2011). The Commission stated that CEA section 23(h)(1)(B)(i) "clearly states only an individual who alleges retaliation in violation of being a whistleblower may bring such a cause of action." *Id.*

Questions have been raised, however, about the inconsistency between this interpretation and the SEC's interpretation of its own authority to take enforcement actions against violators of the anti-retaliation provisions of the SEC's whistleblower protection rules. Accordingly, the Commission is revisiting this issue. The Commission proposes to set aside its 2011 interpretation because it fails to adequately take into full consideration the statutory context of CEA section 23 and other CEA provisions. The 2011 interpretation cannot be squared with CEA section 23(h)(1)(A), which establishes that retaliation is in fact a separate violation of the CEA, nor with the Commission's broad rulemaking authority under CEA section 23(i). The 2011 interpretation also overlooks the Commission's general authority to prosecute violations of any CEA provisions as well as violations of the Commission's rules and orders under CEA sections 6(c), 6(d), 6b, and 6c. Each of these CEA sections empowers the Commission to take action for the violation of "any" CEA provision or rule or regulation thereunder. The Commission notes that while CEA section 23(h)(1) provides for enforcement of the anti-retaliation provisions through a private cause of action, nothing in that section purports to limit the Commission's general enforcement authority or suggests that such private action is exclusive. The SEC's statutory authority in this area is nearly identical to the Commission's, and that agency took a different path in 2011. When commenters asked the SEC to clarify protections against retaliation, it did so by adopting a rule that made any rules promulgated under the protections against retaliation provisions enforceable in an action or proceeding brought by the SEC.[11] Upon reconsideration of its statutory authority on this important issue, and noting that harmonization between the SEC's and the Commission's Whistleblower programs would be beneficial to the public by making the consequences of illegal retaliation more uniform, the Commission has decided to join the SEC on that path.

By today's action, the Commission is taking a necessary step to end the incongruous situation where whistleblowers enjoy protection from retaliation through SEC enforcement action under the securities laws, but no such protection through Commission enforcement action under the CEA. In 1982, Congress granted customers a private right of action under CEA section 22 without diminishing or undermining the Commission's enforcement authority under the CEA. So too here, the Commission believes that Congress intended the Commission to fully exercise its enforcement authority with respect to CEA section 23(h)(1)(A) and to fully exercise its rulemaking authority under CEA section 23(i) in addition to creating a private right of action to protect whistleblowers.

The Commission's proposal also removes any question about a gap in statutory whistleblower protection under the securities laws and the CEA. Consistent with the SEC's approach in its rule, the Commission proposes to add new § 165.20(b) to implement its enforcement authority under CEA section 23 and 17 CFR part 165. To complement the prohibition found in CEA section 23(h)(1)(A), and as consistent with the SEC's whistleblower rules, the Commission proposes to add a new § 165.19(b) to prohibit the enforcement of confidentiality and pre-dispute arbitration clauses respecting actions by potential whistleblowers in any pre-employment, employment or post-employment agreements,[12] and a new § 165.20(a) and (c) to prohibit employers from threatening or harassing or retaliating against individuals who participate in the Commission's whistleblower program, irrespective of whether those individuals qualify for an award,[13] or report internally before providing the Commission with information.[14] The Commission believes that these proposed rules are appropriate to implement CEA section 23(h)(1) and are fully consistent with the purposes of that provision as required by CEA section 23(i).

Conforming and Technical Amendments

To conform to the proposed changes to §§ 165.7 and 165.15, the Commission proposes to strike the reference to "or its delegate" in § 165.11 in the undesignated material before paragraph (a).

The Commission proposes to amend § 165.2(i)(2) concerning the definition of information that led to a successful enforcement action because it contains an erroneous cross-reference. The reference is intended to be to § 165.2(l) regarding the definition of original source. The rule currently refers to paragraph (i) of the section.

The Commission proposes to make a minor change to the wording of § 165.3 concerning the procedures for submitting original information because it contains an erroneous reference to a two-step process. This change makes the language conform to the process previously adopted.[15]

---

[10] Whistleblower Incentives and Protection, 76 FR at 53184 (Aug. 25, 2011) (declining to require whistleblower notification).

[11] *See* SEC Rule 21F–2(b) (17 CFR 240.21F–2(b)).

[12] The Commission is aware of the SEC's enforcement action against the use of confidentiality agreements that might interrupt the free flow of communications from whistleblowers to enforcement authorities. *See In the Matter of KBR Inc.*, SEC Admin. Proc. No. 3–16446 (April 1, 2015) (barring KBR from requiring its employees to have internal clearance before communicating with the SEC on whistleblower matters).

[13] The concept of a whistleblower being protected from retaliation by an employer irrespective of whether the whistleblower qualified for an award is expressed in the definition of whistleblower in § 165.2(p)(2). The Commission is providing whistleblowers additional protections in new § 165.20(a) and (b), and adding § 165.20(c) for convenience and clarity.

[14] The Commission is aware of the SEC's recent Interpretation of the SEC's Whistleblower Rules Under Section 21F of the Securities Exchange Act of 1934, Release No. 34–75592 (August 4, 2015), in which the SEC similarly clarified that anti-retaliation protections extended to individuals who reported internally prior to providing the SEC with information and to individuals who ultimately were not eligible for an award.

The Commission proposes to amend § 165.13(b) concerning appeals because it contains an erroneous cross-reference. The reference intended is to § 165.10 regarding contents of the record, rather than § 165.9 regarding criteria for determining award amounts.

The Commission proposes to move and include updated Form TCR and Form WB–APP to a new appendix B to part 165. The updated Form TCR and Form WB–APP include revisions that previously received information collection requirement approval by the Office of Management and Budget.[16] The Commission also proposes to revise a question in the Form TCR, question E.8, seeking consent from whistleblowers to share their information with other authorities. The revisions include language that is consistent with the confidentiality provisions of § 165.4. The Commission also proposes revisions to the submission instructions portions of the forms to conform to the proposed revisions in the part 165 rules.

Finally, the Commission proposes to make a minor change in the wording of current § 165.7(e), in addition to designating current paragraph (e) as new paragraph (l).

III. Request for Comment

The Commission requests comment on all aspects of the proposed rule amendments.

IV. Related Matters

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. RFA section 603(a), 5 U.S.C. 603(a), requires the Commission to undertake an initial regulatory flexibility analysis of a proposed rule on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Only individuals are eligible for participation in the Commission's whistleblower program. The proposed amendments would apply only to an individual, or individuals acting jointly, who provide information relating to the violation of the CEA or Commission regulations. By definition, companies and other entities cannot be whistleblowers. Consequently, the persons that would be subject to the proposed rule amendments are not "small entities" under the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies under 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3521, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission believes that the proposed amendments, if adopted, would not impose new recordkeeping or information collection requirements that require approval by the Office of Management and Budget under the PRA.

Accordingly, the requirements of the PRA do not apply to this rulemaking.

C. Cost-Benefit Considerations

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[17] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five factors: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Since the basic framework of part 165 remains substantially unchanged, the Commission believes that the costs and benefits of the proposed rule amendments and the status quo baseline (the current rule), to which the proposal's costs and benefits are compared, are similar, but with certain additional benefits attendant to these amendments.[18] The § 165.7 amendments would add transparency to the Commission's process of deciding whistleblower award claims and would harmonize the Commission's rules with those of the SEC. The proposed amendments clarify each step of the process that a whistleblower must follow when making an award claim. The Commission believes that such transparency and harmonization would increase the benefits of the part 165 rules relative to the benefits of the current rules because potential whistleblowers would have greater clarity about the claims and awards process and greater assurance that retaliation would not be tolerated. This clarity and protection should encourage whistleblowers to step forward. Thus, the proposed rules should enhance protection of market participants and the public as well as market integrity without materially adding to the costs attendant to the current regime.

The § 165.4 and 165.15 amendments assign to the Director of the Division of Enforcement the authority to administer the whistleblower program and release whistleblower identifying information. Since these proposed amendments relate solely to the Commission's allocation of authority among its staff, the Commission anticipates that these changes would impose no material costs on market participants or the public. At the same time, the Commission believes the protection of market participants and the public would be enhanced through a more effective and efficient deployment of staff resources.

The § 165.19 and 165.20 amendments clarify the anti-retaliation protections available under the Commission's whistleblower program in light of the Commission's reconsideration of its authority under CEA section 23(h)(1). These proposed changes remove any gap in enforcement authority between the Commission and the SEC with regard to whistleblower protections against retaliation. The Commission preliminarily believes that these changes would impose no material costs on market participants or the public. The proposed rules do not impose any new regulatory burden. To comply with the rules, market participants must refrain from engaging in conduct that is already subject to private rights of action, or including certain provisions waiving rights and remedies or requiring arbitration of disputes in employment agreements. The Commission further believes that the proposed rules might have a positive effect on efficiency, competitiveness, and financial integrity of futures markets through improving detection and remediation of potential violations of the CEA and Commission regulations. For instance, market participants may be further deterred from engaging in violations of the CEA and Commission rules because the likelihood of being caught has increased due to improvements to the whistleblower program that encourage more whistleblowers to provide information to the Commission.

---

[15] *Whistleblower Incentives and Protection,* 76 FR at 53183 (Aug. 25, 2011) (explaining that the rule was adopted with a more streamlined process and one less form than the original proposal).

[16] The Form TCR and Form WB–APP OMB Control Number is 3038–0082. Both forms last received OMB approval on April 8, 2015, with an expiration date of April 30, 2018.

[17] 7 U.S.C. 19(a).

[18] The Commission preliminarily believes that there is not likely to be any material difference between the proposed amendments and the status quo baseline in terms of cost.

The Commission preliminarily believes that price discovery and sound risk management practices would not be materially affected by this proposal. Also, the Commission has not identified any other relevant public interest considerations.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed rules.

D. Antitrust Considerations

CEA section 15(b) requires the Commission to consider the public interests protected by the antitrust laws and to take actions involving the least anti-competitive means of achieving the objectives of the CEA. The Commission preliminarily believes that the proposed rules may have a positive effect on competition through improving detection, deterrence, and remediation of potential violations of the CEA and Commission regulations.

The Commission invites comment on any antitrust considerations arising from the proposed amendments.

E. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law 104–121 (March 29, 1996), as amended by Public Law 110–28 (May 25, 2007),[19] the Commission solicits data to determine whether a proposed rule constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

Commenters are invited to provide empirical data on: the potential annual effect on the economy; any increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation.

List of Subjects in 17 CFR Part 165

Whistleblowing.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 165 as follows:

PART 165—WHISTLEBLOWER RULES

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 12a(5) and 26, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 16, 2010).

■ 2. In § 165.2, revise paragraphs (i)(2) and (l)(2) to read as follows:

§ 165.2 Definitions.

* * * * *

(i) * * *

(2) The whistleblower gave the Commission original information about conduct that was already under examination or investigation by the Commission, the Congress, any other authority of the federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization or futures association, or the Public Company Accounting Oversight Board (except in cases where the whistleblower was an original source of this information as defined in paragraph (l) of this section), and the whistleblower's submission significantly contributed to the success of the action.

* * * * *

(l) * * *

(2) *Information first provided to another authority or person.* If the whistleblower provides information to Congress, any other federal or state authority, a registered entity, a registered futures association, a self-regulatory organization, or to any of any of the persons described in paragraphs (g)(4) and (5) of this section, and the whistleblower, within 180 days, makes a submission to the Commission pursuant to § 165.3, as the whistleblower must do in order for the whistleblower to be eligible to be considered for an award, then, for purposes of evaluating the whistleblower's claim to an award under § 165.7, the Commission will consider that the whistleblower provided original information as of the date of the whistleblower's original disclosure, report, or submission to one of these other authorities or persons. The whistleblower must establish the whistleblower's status as the original source of such information, as well as the effective date of any prior disclosure, report, or submission, to the Commission's satisfaction. The Commission may seek assistance and confirmation from the other authority or person in making this determination.

* * * * *

■ 3. Amend § 165.3 as follows:

■ a. Remove the undesignated introductory paragraph; and

■ b. Revise the introductory text of paragraph (a), and paragraph (a)(1).

The revisions to read as follows:

§ 165.3 Procedures for submitting original information.

(a) A whistleblower will need to submit the whistleblower's information to the Commission. A whistleblower may submit the whistleblower's information:

(1) By completing and submitting a Form TCR online and submitting it electronically through the Commission's Web site at *www.cftc.gov,* or the Commission's Whistleblower Program Web site at *www.whistleblower.gov;* or

* * * * *

■ 4. In § 165.4, revise the introductory text of paragraph (a), and paragraphs (a)(1) and (2) to read as follows:

§ 165.4 Confidentiality.

(a) *In general.* Section 23(h)(2) of the Commodity Exchange Act requires that the Commission not disclose information that could reasonably be expected to reveal the identity of a whistleblower, except that the Commission may disclose such information in the following circumstances, in accordance with the Privacy Act of 1974 (5 U.S.C. 552a):

---

[19] The provisions governing congressional review of agency rulemaking are set forth in SBREFA subtitle E, which is codified at 5 U.S.C. 801–808.

(1) When disclosure is required to a defendant or respondent in connection with a public proceeding that the Commission institutes or in another public proceeding that is filed by an authority to which the Commission provides the information, as described below; or

(2) When the Commission determines that it is necessary to accomplish the purposes of the Commodity Exchange Act and to protect customers, it may provide whistleblower information, without the loss of its status as confidential whistleblower information in the hands of the Commission, to: the Department of Justice; an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction; a registered entity, registered futures association, or a self-regulatory organization; a State attorney general in connection with a criminal investigation; any appropriate State department or agency, acting within the scope of its jurisdiction; or a foreign futures authority; and, as set forth in section 23(h)(2)(C) of the Commodity Exchange Act, each such entity is required to maintain the information as confidential in accordance with the requirements of section 23(h)(2)(A) of the Commodity Exchange Act.

* * * * *

■ 5. Revise § 165.5 to read as follows:

§ 165.5 Requirements for consideration of an award.

(a) Subject to the eligibility requirements described in this part, the Commission will pay an award to one or more whistleblowers who:

(1) Provide a voluntary submission to the Commission;

(2) That contains original information; and

(3) That leads to the successful resolution of a covered judicial or administrative action or successful enforcement of a related action or both; and

(b) In order to be eligible, the whistleblower must:

(1) Have voluntarily provided the Commission original information in the form and manner that the Commission requires in § 165.3;

(2) Have submitted a claim in response to a Notice of Covered Action or a final judgment in a related action or both;

(3) Provide the Commission, upon its staff's request, certain additional information, including:

(i) Explanations and other assistance, in the manner and form that staff may request, in order that the staff may evaluate the use of the information submitted related to the whistleblower's application for an award;

(ii) All additional information in the whistleblower's possession that is related to the subject matter of the whistleblower's submission related to the whistleblower's application for an award; and

(iii) Testimony or other evidence acceptable to the staff relating to the whistleblower's eligibility for an award; and

(4) If requested by the Whistleblower Office, enter into a confidentiality agreement in a form acceptable to the Whistleblower Office, including a provision that a violation of the confidentiality agreement may lead to the whistleblower's ineligibility to receive an award.

(c) The Commission may, in its sole discretion, waive any procedural requirements based upon a showing of extraordinary circumstances.

■ 6. Amend § 165.7 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (b), (d), and (e); and

■ c. Add paragraphs (f) through (l).

The revisions and additions to read as follows:

§ 165.7 Procedures for award applications in Commission actions and related actions, and Commission award determinations.

* * * * *

(b)(1) To file a claim for a whistleblower award, the whistleblower must file Form WB–APP, Application for Award for Original Information Provided Pursuant to section 23 of the Commodity Exchange Act. The whistleblower must sign this form as the claimant and submit it to the Commission by mail or fax to Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, Fax (202) 418–5975, or by completing and submitting the Form WB–APP online and submitting it electronically through the Commission's Web site at *http://www.cftc.gov* or the Commission's Whistleblower Program Web site at *www.whistleblower.gov.*

(2) The Form WB–APP, including any attachments, must be received by the Commission within 90 calendar days of the date of the Notice of Covered Action or 90 calendar days following the date of a final judgment in a related action (or if the final judgment in a related action was issued prior to the action meeting the definition of related action, within 90 calendar days following the date the action satisfied the definition of related action, except in the circumstances described in paragraph (b)(3)(ii) of this section). One Form WB–APP may be filed in response to both a Notice of Covered Action and final judgment in a related action if the relevant time periods are applicable.

(3) If a covered judicial or administrative action and related actions have different final judgment dates or if there is no covered judicial or administrative action connected to a related action, a claimant, who wishes to file a claim for an award in both a covered judicial or administrative action and a related action, or in a related action that does not have a connected covered judicial or administrative action, must follow one of the following procedures depending on that claimant's particular situation.

(i) If a final judgment imposing monetary sanctions in a related action has not been entered at the time the claimant submits a claim for an award in connection with a covered judicial or administrative action, the claimant must submit the claim for the related action on Form WB–APP within ninety (90) calendar days following the date of issuance of a final judgment in the related action.

(ii) If a final judgment in a related action has been entered and a Notice of Covered Action for a related covered judicial or administrative action has not been published, a claimant for an award in both the covered judicial or administrative action and related action may submit the claims for both the related action and the covered judicial or administrative action within ninety (90) days of the date of the Notice of Covered Action. The claims may be submitted on the same Form WB–APP.

(iii) If there is a final judgment in a related action that relates to a judicial or administrative action brought by the Commission under the Commodity Exchange Act that is not a covered judicial or administrative action, and therefore there is no Notice of Covered Action, a claimant for an award in connection with the related action must submit the claim in connection with the related action on Form WB–APP within ninety (90) calendar days following either:

(A) The date of issuance of a final judgment in the related action, if that date is after the date of issuance of the final judgment in the related Commission judicial or administrative action; or

(B) The date of issuance of the final judgment in the related Commission judicial or administrative action, *i.e.*, the date the related action becomes a related action, if the date of issuance of the final judgment in the related action precedes the final judgment in the related Commission judicial or administrative action.

* * * * *

(d) A claimant may withdraw a Form WB–APP by submitting a written request to the Whistleblower Office at any time during the review process.

(e)(1) The Whistleblower Office may issue a Proposed Final Disposition for award applications that do not relate to a Notice of Covered Action, a final judgment in a related action, or a previously filed Form TCR without presentation of the award claim to the staff designated by the Director of the Division of Enforcement under § 165.15(a)(2) ("Claims Review Staff"). In such instances, the Whistleblower Office will inform the award claimant in writing that the claim does not relate to a Notice of Covered Action, a final judgment in a related action, or a previously filed Form TCR and will be rejected unless the claimant provides additional information. The claimant will have thirty (30) days from the date of the written notice to respond and to correct the identified deficiencies. If the claimant does not respond in thirty (30) days or if the response does not include information showing that the WB–APP relates to a Notice of Covered Action, a final judgment in a related action, or a previously filed Form TCR the Whistleblower Office will issue a Proposed Final Disposition. The claimant's failure to submit a timely response to the written notice from the Whistleblower Office will constitute a failure to exhaust administrative remedies, and the claimant will be prohibited from pursuing an appeal under § 165.13.

(2) The Whistleblower Office will notify the Claims Review Staff of any Proposed Final Disposition under this subsection. Within thirty (30) calendar days thereafter, any member of the Claims Review Staff may request that the Proposed Final Disposition be reviewed by the Claims Review Staff. If no member of the Claims Review Staff requests such a review within the 30-day period, then the Proposed Final Disposition will become the Final Order of the Commission. In the event that a member of the Claims Review Staff requests a review, the Claims Review Staff will review the record that the Whistleblower Office relied upon in making its determination and either remand to the Whistleblower Office for further action or issue a Final Order of the Commission, which could consist of the Proposed Final Disposition.

(f)(1) In connection with each individual covered judicial or administrative action or final judgment in a related action, for which an award application is submitted, once the time for filing any appeals of the covered judicial or administrative action or the final judgment in the related action has expired (or, where an appeal is filed of the covered judicial or administrative action, or the final judgment in a related action, as applicable, and concluded), the Claims Review Staff designated under § 165.15(a)(2) will evaluate all timely whistleblower award claims submitted on Form WB–APP in response to a Notice of Covered Action, referenced in § 165.7(a), or final judgment in a related action in accordance with the criteria set forth in this part.

(2) The Whistleblower Office may require that the claimant provide additional information relating to the claimant's eligibility for an award or satisfaction of any of the conditions for an award, as set forth in § 165.5(b)(2). The Whistleblower Office may also request additional information from the claimant in connection with the claim for an award in a related action to demonstrate that the claimant directly (or through the Commission) voluntarily provided the governmental agency, regulatory authority or self-regulatory organization the original information that led to the Commission's successful covered action, and that the information provided by the claimant led to the successful enforcement of the related action. The Whistleblower Office may also, in its discretion, seek assistance and confirmation from the other agency in making this determination.

(g)(1) Following Claims Review Staff evaluation, the Claims Review Staff will issue a preliminary determination setting forth a preliminary assessment as to whether the claim should be granted or denied and, if granted, setting forth the proposed award percentage amount. The Whistleblower Office will send a copy of the preliminary determination to the claimant.

(2) The claimant may contest the preliminary determination made by the Claims Review Staff by submitting a written response to the Whistleblower Office setting forth the grounds for the claimant's objection to either the denial of an award or the proposed amount of an award. The response must be in the form and manner that the Whistleblower Office shall require. The claimant may also include documentation or other evidentiary support for the grounds advanced in the claimant's response. The claimant may also request a meeting with the Whistleblower Office within the timeframes provided in paragraph (g) of this section, however such meetings are not required, and the Whistleblower Office may in its sole discretion deny the request.

(i) Before determining whether to contest a preliminary determination, the claimant may, within thirty (30) days of the date of the preliminary determination, request that the Whistleblower Office make available for the claimant's review the materials from among those set forth in § 165.10 that formed the basis of the Claims Review Staff's preliminary determination.

(ii) If the claimant decides to contest the preliminary determination, the claimant must submit the claimant's written response and supporting materials setting forth the grounds for the claimant's objection to either the denial of an award or the proposed amount of an award within sixty (60) calendar days of the date of the preliminary determination, or if a request to review materials used to make a Preliminary Determination is made pursuant to paragraph (g)(2)(i) of this section, then within sixty (60) calendar days of the Whistleblower Office making those materials available for the claimant's review. The claimant also may request a meeting with the Whistleblower Office within those same sixty (60) calendar days. However, such meetings are not required and the Whistleblower Office may in its sole discretion decline the request.

(h) If the claimant fails to submit a timely response pursuant to paragraph (g) of this section, then the preliminary determination will become the Final Order of the Commission (except where the preliminary determination recommended an award, in which case the preliminary determination will be deemed a proposed final determination for purposes of paragraph (j) of this section). The claimant's failure to submit a timely response contesting a preliminary determination will constitute a failure to exhaust administrative remedies, and the claimant will be prohibited from pursuing an appeal under § 165.13.

(i) If the claimant submits a timely response under paragraph (g) of this section, then the Claims Review Staff will consider the issues and grounds advanced in the claimant's response, along with any supporting documentation the claimant provided, and will make its proposed final determination.

(j) The Whistleblower Office will notify the Commission of each proposed final determination. Within thirty (30) calendar days thereafter, any Commissioner may request that the proposed final determination be reviewed by the Commission. If no

Commissioner requests such a review within the 30-day period, then the proposed final determination will become the Final Order of the Commission. In the event a Commissioner requests a review, the Commission will review the record that the staff relied upon in making its determinations, including the claimant's submissions to the Whistleblower Office, and issue its Final Order.

(k) A preliminary determination, proposed final disposition, or a proposed final determination may be issued only after a review for legal sufficiency by the Office of the General Counsel.

(l) The Office of the Secretariat will serve the claimant with the Final Order of the Commission.

■ 7. In § 165.9, revise the introductory paragraph to read as follows:

§ 165.9 Criteria for determining amount of award.

The determination of the amount of an award shall be in the discretion of the Commission. This discretion shall be exercised as prescribed by § 165.7.

* * * * *

■ 8. Amend § 165.10 as follows:

■ a. Add paragraphs (a)(8) and (9); and

■ b. Revise paragraph (b).

The additions and revision to read as follows:

§ 165.10 Contents of record for award determinations.

(a) * * *

(8) With respect to an award claim involving a related action, any statements or other information that an entity provides or identifies in connection with an award determination, provided the entity has authorized the Commission to share the information with the claimant. (Neither the Commission nor the Claims Review Staff may rely upon information that the entity has not authorized the Commission to share with the applicant); and

(9) Any other documents or materials including sworn declarations from third-parties that are received or obtained by the Whistleblower Office to assist the Commission resolve the applicant's award application, including information related to the claimant's eligibility. (Neither the Commission nor the Claims Review Staff may rely upon information that a third party has not authorized the Commission to share with the claimant).

(b) A claimant is not entitled, under the provisions of this part, to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared to assist the Commission or Claims Review Staff in deciding the claim) other than those listed in paragraph (a) of this section. The Whistleblower Office may make redactions as necessary to comply with any statutory restrictions, to protect the Commission's law enforcement and regulatory functions, and to comply with requests for confidential treatment from other law enforcement and regulatory authorities.

■ 9. Revise § 165.11 to read as follows:

§ 165.11 Awards based upon related actions.

(a) Provided that a whistleblower or whistleblowers comply with the requirements in §§ 165.3, 165.5 and 165.7, and pursuant to § 165.8, the Commission may grant an award based on the amount of monetary sanctions collected in a "related action" or "related actions," where:

(1) A "related action" is a judicial or administrative action that is brought by:

(i) The Department of Justice;

(ii) An appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

(iii) A registered entity, registered futures association, or self-regulatory organization;

(iv) A State criminal or appropriate civil agency, acting within the scope of its jurisdiction; or

(v) A foreign futures authority; and

(2) The "related action" is based on the original information that the whistleblower voluntarily submitted to the Commission and led to a successful resolution of the Commission judicial or administrative action.

(b) The Commission will not make an award to a claimant for a final judgment in a related action if the claimant has already been granted an award by the Securities and Exchange Commission (SEC) for that same action pursuant to its whistleblower award program under section 21F of the Securities Exchange Act (15 U.S.C. 78a *et seq.*). If the SEC has previously denied an award to the claimant for a judgment in a related action, the whistleblower will be precluded from relitigating any issues before the Commission that the SEC resolved against the claimant as part of the award denial.

■ 10. Revise § 165.13 to read as follows:

§ 165.13 Appeals.

(a) Any Final Order of the Commission relating to a whistleblower award determination, including whether, to whom, or in what amount to make whistleblower awards, may be appealed to the appropriate court of appeals of the United States not more than thirty (30) days after the Final Order of the Commission is issued, provided that administrative remedies have been exhausted.

(b) The record on appeal shall consist of:

(1) The Contents of Record for Award Determinations, as set forth in § 165.10. The record on appeal shall not include any pre-decisional or internal deliberative process materials that are prepared to assist the Commission or the Claims Review Staff in deciding the claim (including staff's draft preliminary determination or any proposed final determination or staff's draft final determination); and

(2) The preliminary determination and the Final Order of the Commission, as set forth in § 165.7.

■ 11. Revise § 165.15 to read as follows:

§ 165.15 Administering the whistleblower program.

(a) *Specific authorities*—(1) *Payments, deposits, and credits.* The Executive Director is authorized to deposit into or credit collected monetary sanctions to the Fund, and to make payment of awards therefrom, with the concurrence of the General Counsel and the Director of the Division of Enforcement, or of their respective designees.

(2) *Designation of Claims Review Staff.* The Claims Review Staff referenced in § 165.7 shall be composed of no fewer than three and no more than five staff members from any of the Commission's Offices or Divisions (except the Office of General Counsel) who have not had direct involvement in the underlying enforcement action, as designated by the Director of the Division of Enforcement in consultation with the Executive Director. The Claims Review Staff will always include at least one staff member who does not work in the Division of Enforcement.

(3) *Disclosure of whistleblower identifying information.* The Director of the Division of Enforcement is authorized on behalf of the Commission to exercise its discretion to disclose whistleblower identifying information under § 165.4(a).

(b) *General authority to administer the program.* The Director of the Division of Enforcement shall have general authority to administer the whistleblower program except as otherwise provided under this part.

■ 12. Revise § 165.19 to read as follows:

§ 165.19 Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes.

(a) *Non-waiver.* The rights and remedies provided for in part 165 of the

Commission's regulations may not be waived by any agreement, policy, form, or condition of employment, including by a predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if the agreement requires arbitration of a dispute arising under this part.

(b) *Protected communications.* No person may take any action to impede an individual from communicating directly with the Commission's staff about a possible violation of the Commodity Exchange Act, including by enforcing, or threatening to enforce, a confidentiality agreement or predispute arbitration agreement with respect to such communications.

■ 13. Add § 165.20 to read as follows:

§ 165.20 Whistleblower anti-retaliation protections.

(a) *In general.* No employer may discharge, demote, suspend, directly or indirectly threaten or harass, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

(1) In providing information to the Commission in accordance with this part; or

(2) In assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

(b) *Anti-retaliation enforcement.* Section 23(h)(1)(A) of the Commodity Exchange Act (7 U.S.C. 26(h)(1)), including the rules in this part promulgated thereunder, shall be enforceable in an action or proceeding brought by the Commission.

(c) *Protections apply regardless of non-qualification.* The anti-retaliation protections apply whether or not the whistleblower satisfies the requirements, procedures, and conditions to qualify for an award.

■ 14. Revise appendix A to part 165 to read as follows:

Appendix A to Part 165—Guidance With Respect to the Protection of Whistleblowers Against Retaliation

(a) *In general.* Section 23(h)(1) of Commodity Exchange Act prohibits employers from engaging in retaliation against whistleblowers. This provision provides whistleblowers with certain protections against retaliation, including: a federal cause of action brought by the whistleblower against the employer, which must be filed in the appropriate district court of the United States within two (2) years of the employer's retaliatory act, and potential relief for prevailing whistleblowers, including reinstatement, back pay, and compensation for other expenses, including reasonable attorney's fees.

(b) *Enforcement*—(1) *Cause of action.* An individual who alleges discharge, demotion, suspension, direct or indirect threats or harassment, or any other manner of discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act may bring an action under section 23(h)(1)(B) of the Commodity Exchange Act in the appropriate district court of the United States for the relief provided in section 23(h)(1)(C) of the Commodity Exchange Act, unless the individual who is alleging discharge or other discrimination in violation of section 23(h)(1)(A) of the Commodity Exchange Act is an employee of the Federal Government, in which case the individual shall only bring an action under section 1221 of title 5, United States Code.

(2) *Subpoenas.* A subpoena requiring the attendance of a witness at a trial or hearing conducted under section 23(h)(1)(B)(ii) of the Commodity Exchange Act may be served at any place in the United States.

(3) *Statute of limitations.* A private cause of action under section 23(h)(1)(B) of the Commodity Exchange Act may not be brought more than two (2) years after the date on which the violation reported in section 23(h)(1)(A) of the Commodity Exchange Act is committed.

(4) *Commission authority to bring action.* The Commission may bring an enforcement action against an employer that retaliates against a whistleblower by discharge, demotion, suspension, direct or indirect threats or harassment, or any other manner of discrimination.

(c) *Relief.* Relief for an individual prevailing in an action brought under section 23(h)(1)(B) of the Commodity Exchange Act shall include—

(1) Reinstatement with the same seniority status that the individual would have had, but for the discrimination;

(2) The amount of back pay otherwise owed to the individual, with interest; and

(3) Compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

■ 15. Add appendix B to part 165 to read as follows:

Appendix B to Part 165—Form TCR and Form WP–APP

BILLING CODE 6351–01–P

UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Washington, DC 20581

FORM TCR
TIP, COMPLAINT OR REFERRAL

See attached Privacy Act Statement, Submission Procedures and Completion Instructions Below.

A. TELL US ABOUT YOURSELF			
COMPLAINANT 1:			
1. Last Name	2. First Name		3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. E-mail Address	13. Preferred Method of Communication
14. Occupation			
COMPLAINANT 2:			
1. Last Name	2. First Name		3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. E-mail Address	13. Preferred Method of Communication
14. Occupation			

Please be advised that pursuant to 5 CFR 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

B. YOUR ATTORNEY'S INFORMATION (If Applicable – See Instructions)			
1. Attorney's Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country
8. Telephone	9. Fax	10. E-mail Address	

C. TELL US WHO YOU ARE COMPLAINING ABOUT

INDIVIDUAL / ENTITY 1:

1. Type: ☐ Individual ☐ Entity	2. If an individual, specify profession. If an entity, specify type.

3. Name

4. Street Address	5. Apartment/Unit #

6. City	7. State/Province	8. ZIP/Postal Code	9. Country

10. Telephone	11. E-mail Address	12. Internet Address

13. If you are complaining about a firm or individual that has custody or control of your investments, have you had difficulty contacting that entity or individual? ☐ Yes ☐ No ☐ Unknown

14. Are you, or were you, associated with the individual or firm when the alleged conduct occurred? ☐ Yes ☐ No ☐ Unknown

If yes, describe how you are, or were, associated with the individual or firm you are complaining about.

15. What was the initial form of contact between you and the person against whom you are filing this complaint?
☐ Telephone ☐ TV Advertisement ☐ Radio Advertisement ☐ Internet Advertisement ☐ E-Mail
☐ U.S. Postal Service ☐ Event (seminar, free lunch, ext.) ☐ Other

If other, please describe:

INDIVIDUAL / ENTITY 2:

1. Type: ☐ Individual ☐ Entity

2. If an individual, specify profession. If an entity, specify type.

3. Name

4. Street Address

5. Apartment/Unit #

6. City

7. State/Province

8. ZIP/Postal Code

9. Country

10. Telephone

11. E-mail Address

12. Internet Address

13. If you are complaining about a firm or individual that has custody or control of your investments, have you had difficulty contacting that entity or individual? ☐ Yes ☐ No ☐ Unknown

14. Are you, or were you, associated with the individual or firm when the alleged conduct occurred? ☐ Yes ☐ No ☐ Unknown

If yes, describe how you are, or were, associated with the individual or firm you are complaining about.

15. What was the initial form of contact between you and the person against whom you are filing this complaint?
☐ Telephone ☐ TV Advertisement ☐ Radio Advertisement ☐ Internet Advertisement ☐ E-Mail
☐ U.S. Postal Service ☐ Event (seminar, free lunch, ext.) ☐ Other

If other, please describe:

D. TELL US ABOUT YOUR COMPLAINT

1. Occurrence Date (mm/dd/yyyy):	2. Is the conduct on-going? [] Yes [] No [] Don't Know

3. Please select the option(s) that best describes your complaint.

[] Fraudulent representations that persuaded you to trade futures, options, swaps, forex, or leveraged transactions

[] Some type of cheating or fraud that occurred after you had deposited funds to trade futures, options, swaps, forex, retail commodity, or leveraged transactions (for example, if someone used the funds you deposited to pay off someone else or you have asked for the return of your funds and have been refused).

[] Someone or some firm that should be registered under the Commodity Exchange Act, but is not.

[] Disruptive or manipulative trading activity in the futures, options or swaps markets.

[] The trading of futures options, or swaps based upon confidential information by someone not allowed to use such information.

[] If your complaint does not fit into any of the above-described categories please describe below.

4. Select the type of product/instrument:

[] A futures contract, including a single stock futures contract, a narrow based or broad based security future contract.

[] An option on a futures contract, an option on a commodity, BUT NOT an option on a security or a basket of securities.

[] A swap, including a mixed swap BUT NOT a swap based on a single security or based on a narrow (i.e., nine or less) index of securities.

[] A cash (or physical) contract traded in interstate commerce.

[] A foreign currency transaction.

- If a foreign currency transaction:
    - Are you an individual that trades or invests more than $10,000,000 on a discretionary basis?
      [] Yes [] No
    - Are you an individual that trades or invests more than $5,000,000 and enters into the foreign currency agreement to manage the risk associated with some other asset or liability?
      [] Yes [] No

☐ A commodity transaction entered into or offered on a leveraged or margined basis, or financed by the offeror, the counterparty, or someone acting in concert with the offeror or counterparty.

- If yes:
    - Are you an individual that trades or invests more than $10,000,000 on a discretionary basis?
      ☐ Yes ☐ No
    - Are you an individual that trades or invests more than $5,000,000 and enters into the foreign currency agreement to manage the risk associated with some other asset or liability?
      ☐ Yes ☐ No

☐ Other

If other, please describe:

5. If applicable, what is the name of product/investment?

6. Have you suffered a monetary loss? ☐ Yes ☐ No

If yes, describe how much.

7. Has the individual or firm who engaged in the conduct acknowledged their fault? ☐ Yes ☐ No

8. Have you or anyone else taken any action against the firm or person who engaged in the alleged conduct? ☐ Yes ☐ No

If yes, select the appropriate category:

☐ Prior complaint to the CFTC.
☐ Complaint to another regulator.
☐ A state or federal criminal law enforcement entity.
☐ A legal action filed against the person or firm in a court of law.
☐ Additional comments based on above selection (e.g., Who, When, Contact, To whom made, Case Number, Court).

9. State in detail all facts pertinent to the alleged violation. Explain why you believe the facts described constitute a violation of the Commodity Exchange Act. If necessary, please use additional sheets.

10. Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession. If necessary, please use additional sheets.

E. WHISTLEBLOWER PROGRAM

1. Describe how and from whom you obtained the information that supports your allegations. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Use additional sheets, if necessary.

2. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity would be revealed if the documents or information were disclosed to a third party.

3. Have you or your attorney had any prior communication(s) with the CFTC concerning this matter? ☐ Yes ☐ No

If "Yes," please identify the CFTC staff member(s) with whom you or your attorney communicated:

4. Have you or your attorney provided the information to any other agency or organization, or has any other agency or organization requested the information or related information from you? ☐ Yes ☐ No

If "Yes," please provide details. Use additional sheets, if necessary.

If "Yes," please provide the name and contact information of the point of contact at the other agency or organization, if known.

5. Does this complaint relate to an entity of which you are or were an officer, director, counsel, employee, consultant or contractor?
☐ Yes ☐ No

If "Yes," have you reported this violation to your supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations? ☐ Yes ☐ No

If "Yes," please provide details including the date you took the action(s). Use additional sheets, if necessary.

6. Have you taken any other action regarding your complaint? ☐ Yes ☐ No

If "Yes," please provide details. Use additional sheets, if necessary.

7. Provide any additional information that you think may be relevant.

8. May the CFTC have your consent to share your identifying information with other governmental authorities? ☐ Yes ☐ No

As a whistleblower, you have confidentiality protections and we may only reveal your identity under certain conditions, including with your consent. You may choose not to consent. If you do not consent, we will maintain your identity as confidential, as required by 17 CFR 165.4, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or, if the Commission determines such disclosure is necessary or appropriate to accomplish the purposes of the Commodity Exchange Act and to protect customers, the Commission may provide the information to the Department of Justice; an appropriate department or agency of the Federal Government; a state attorney general; any appropriate department or agency of a state; a registered entity, registered futures association, or self-regulatory organization; or a foreign futures authority. Those entities are subject to the same confidentiality requirements as the Commission.

F. WHISTLEBLOWER ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you currently, or were you at the time that you acquired the original information that you are submitting to the CFTC, a member, officer or employee of: the CFTC; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; a law enforcement organization; or a foreign regulatory authority or law enforcement organization?

[] Yes [] No

2. Are you providing this information pursuant to a cooperation agreement with the CFTC or another agency or organization?

[] Yes [] No

3. Before you provided this information, did you (or anyone representing you) receive any request, inquiry or demand that relates to the subject matter of this submission (i) from the CFTC, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority?

[] Yes [] No

4. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information that you are submitting to the CFTC?

[] Yes [] No

5. Did you acquire the information being provided to the CFTC from any person described in Questions 1 through 4 above?

[] Yes [] No

6. If you answered "Yes" to any of Questions 1 through 5 above, please provide details. Use additional sheets, if necessary.

G. WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the Commodity Futures Trading Commission, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Print Name	
Signature	Date

H. COUNSEL CERTIFICATION

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief.

I further certify that I have verified the identity of the whistleblower on whose behalf this form is being submitted by viewing the whistleblower's valid, unexpired government issued identification (e.g., driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the whistleblower, in my records. I further certify that I have obtained the whistleblower's non-waivable consent to provide the Commodity Futures Trading Commission with his or her original signed Form TCR upon request in the event that the Commodity Futures Trading Commission requests it due to concerns that the whistleblower may have knowingly and willfully made false, fictitious or fraudulent statements or representations, or used any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry; and that I consent to be legally obligated to do so within seven (7) calendar days of receiving such a request from the Commodity Futures Trading Commission.

Print Name of Attorney and Law Firm, if Applicable	
Signature	Date

BILLING CODE 6351–01–C

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC) inform individuals of the following when asking for information. The solicitation of this information is authorized under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* This form may be used by anyone wishing to provide the CFTC with information concerning a violation of the Commodity Exchange Act or the CFTC's regulations. If an individual is submitting this information for the CFTC's whistleblower award program pursuant to Section 23 of the Commodity Exchange Act, the information provided will be used to enable the CFTC to determine the individual's eligibility for payment of an award. This information will be used to investigate and prosecute violations of the Commodity Exchange Act and the CFTC's regulations. This information may be disclosed to federal, state, local or foreign agencies or other authorities responsible for investigating, prosecuting, enforcing or implementing laws, rules or regulations implicated by the information consistent with the confidentiality requirements set forth in Section 23 of the Commodity Exchange Act and Part 165 of the CFTC's regulations. The information will be maintained and additional disclosures may be made in accordance with System of Records Notices CFTC–49, "Whistleblower Records" (exempted), CFTC–10, "Investigatory Records" (exempted), and CFTC–16, "Enforcement Case Files." Furnishing the information is voluntary. However, if an individual is providing information for the whistleblower award program, not providing required information may result in the individual not being eligible for award consideration.

Questions concerning this form may be directed to Commodity Futures Trading Commission, Whistleblower Office, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Submission Procedures

- If you are submitting information for the CFTC's whistleblower award program, you *must* submit your information using this Form TCR.
- You may submit this form electronically, through the web portal found on the CFTC's Web site at *http://www.cftc.gov,* which is also accessible from the CFTC Whistleblower Program Web site at *www.whistleblower.gov.* You may also print this form and submit it by mail to Commodity Futures Trading Commission, Whistleblower Office, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or by facsimile to (202) 418–5975.
- You have the right to submit information anonymously. If you do not submit anonymously, please note that the CFTC is required by law to maintain the confidentiality of any information which could reasonably identify you, and will only reveal such information in limited and specifically-defined circumstances. *See* 7 U.S.C. 26(h)(2); 17 CFR 165.4. However, in order to receive a whistleblower award, you will need to be identified to select CFTC staff for a final eligibility determination, and in unusual circumstances, you may need to be identified publicly for trial. You should therefore provide some means for the CFTC's staff to contact you, such as a telephone number or an email address.

Instructions for Completing Form TCR

General

All references to "you" and "your" are intended to mean the complainant.

Section A: Tell Us About Yourself

Questions 1–14: Please provide the following information about yourself:

☐ last name, first name and middle initial;
☐ complete address, including city, state and zip code;
☐ telephone number and, if available, an alternate number where you can be reached;
☐ your email address (to facilitate communications, we strongly encourage you to provide an email address, especially if you are filing anonymously);
☐ your preferred method of communication; and
☐ your occupation.

Section B: Your Attorney's Information

Complete this section only if you are represented by an attorney in this matter.

Questions 1–10: Provide the following information about your attorney:

☐ attorney's name;
☐ firm name;
☐ complete address, including city, state and zip code;
☐ telephone number and fax number; and
☐ email address.

Section C: Tell Us Who You Are Complaining About

Question 1–2: Choose one of the following that best describes the individual's profession or the type of entity to which your complaint relates:

For Individuals: accountant, analyst, associated person, attorney, auditor, broker, commodity trading advisor, commodity pool operator, compliance officer, employee, executing broker, executive officer or director, financial planner, floor broker, floor trader, trader, unknown or other (specify).

For Entities: bank, commodity pool, commodity pool operator, commodity trading advisor, futures commission merchant, hedge fund, introducing broker, major swap participant, retail foreign exchange dealer, swap dealer, unknown or other (specify).

Questions 3–12: For each individual and/or entity, provide the following information, if known:

☐ full name;
☐ complete address, including city, state and zip code;
☐ telephone number;
☐ email address; and
☐ internet address, if applicable.

Questions 13: If the firm or individual you are complaining about has custody or control of your investment, identify whether you have had difficulty contacting that firm or individual.

Question 14: Identify if you are, or were, associated with the individual or firm you are complaining about. If yes, describe how you are, or were, associated with the individual or firm you are complaining about.

Question 15: Identify the initial form of contact between you and the person against whom you are filing this complaint.

Section D: Tell Us About Your Complaint

Question 1: State the date (mm/dd/yyyy) that the alleged conduct occurred or began.

Question 2: Identify if the conduct is ongoing.

Question 3: Choose the option that you believe best describes the nature of your complaint. If you are alleging more than one violation, please list all that you believe may apply.

Question 4: Select the type of product or instrument you are complaining about.

Question 5: If applicable, please name the product or instrument. If yes, please describe.

Question 6: Identify whether you have suffered a monetary loss. If yes, please describe.

Question 7: Identify if the individual or firm you are complaining about acknowledged their fault.

Question 8: Indicate whether you have taken any other action regarding your complaint, including whether you complained to the CFTC, another regulator, a law enforcement agency, or any other agency or organization, or initiated legal action, mediation, arbitration or any other action.

If you answered yes, provide details, including the date on which you took the action(s) described, the name of the person or entity to whom you directed any report or complaint, and contact information for the person or entity, if known, and the complete case name, case number and forum of any legal action you have taken.

Question 9: State in detail all facts pertinent to the alleged violation. Explain why you believe the facts described constitute a violation of the Commodity Exchange Act.

Question 10: Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession.

Section E: Whistleblower Program

Question 1: Describe how you obtained the information that supports your allegations. If any information was obtained from an attorney or in a communication where an attorney was present, identify such information with as much particularity as possible. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible.

Question 2: Identify any documents or other information in your submission on this Form TCR that you believe could reasonably be expected to reveal your identity. Explain the basis for your belief that your identity would be revealed if the documents or information were disclosed to a third party.

Question 3: State whether you or your attorney have had any prior communication(s) with the CFTC concerning this matter.

If you answered "yes", identify the CFTC staff member(s) with whom you or your attorney communicated.

Question 4: Indicate whether you or your attorney have provided the information you are providing to the CFTC to any other agency or organization, or whether any other agency or organization has requested the information or related information from you.

If you answered "yes", provide details and the name and contact information of the point of contact at the other agency or organization, if known.

Question 5: Indicate whether your complaint relates to an entity of which you are, or were in the past, an officer, director, counsel, employee, consultant or contractor.

If you answered "yes", state whether you have reported this violation to your supervisor, compliance office, whistleblower hotline, ombudsman, or any other available mechanism at the entity for reporting violations. Please provide details, including the date on which you took the action.

Question 6: Indicate whether you have taken any other action regarding your complaint, including whether you complained to the CFTC, another regulator, a law enforcement agency, or any other agency or organization, or initiated legal action, mediation, arbitration or any other action.

If you answered "yes", provide details, including the date on which you took the action(s) described, the name of the person or entity to whom you directed any report or complaint, and contact information for the person or entity, if known, and the complete case name, case number and forum of any legal action you have taken.

Question 7: Provide any additional information you think may be relevant.

Question 8: Indicate whether you provide your consent to the CFTC allowing the CFTC to share your identifying information with other governmental authorities.

Section F: Whistleblower Eligibility Requirements and Other Information

Question 1: State whether you are currently, or were at the time that you acquired the original information that you are submitting to the CFTC, a member, officer or employee of: the CFTC; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; a law enforcement organization; or a foreign regulatory authority or law enforcement organization.

Question 2: State whether you are providing the information pursuant to a cooperation agreement with the CFTC or with another agency or organization.

Question 3: State whether you are providing this information before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of this submission (i) from the CFTC, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 4: State whether you are currently a subject or target of a criminal investigation, or whether you have been convicted of a criminal violation, in connection with the information you are submitting to the CFTC.

Question 5: State whether you acquired the information you are providing to the CFTC from any individual described in Questions 1 through 4 of this section.

Question 6: If you answered yes to any of Questions 1 through 5, please provide details.

Section G: Whistleblower's Declaration

You must sign this Declaration if you are submitting this information pursuant to the CFTC whistleblower program and wish to be considered for an award. If you are submitting your information using the electronic version of Form TCR through the CFTC's web portal, you must check the box to agree with the declaration. If you are submitting your information anonymously, you must still sign this Declaration (using the term "anonymous") or check the box as appropriate, and, if you are represented by an attorney, you must provide your attorney with the original of this signed form, or maintain a copy for your own records. If you are not submitting your information pursuant to the CFTC whistleblower program, you do not need to sign this Declaration or check the box.

Section H: Counsel Certification

If you are submitting this information pursuant to the CFTC whistleblower program and you are doing so anonymously through an attorney, your attorney must sign the Counsel Certification Section. If your attorney is submitting your information using the electronic version of Form TCR through the CFTC's web portal, he/she must check the box to agree with the certification. If you are represented in this matter but you are not submitting your information pursuant to the CFTC whistleblower program, your attorney does not need to sign this Certification or check the box.

BILLING CODE 6351–01–P

UNITED STATES
COMMODITY FUTURES TRADING COMMISSION
Washington, DC 20581

FORM WB-APP
APPLICATION FOR AWARD FOR ORIGINAL INFORMATION PROVIDED PURSUANT TO SECTION 23 OF THE COMMODITY EXCHANGE ACT

A. TELL US ABOUT YOURSELF (Required for All Submissions)

1. Last Name	First Name	M.I.	SSN Last Four Digits
2. Street Address			Apartment/Unit #
City	State/Province	ZIP/Postal Code	Country
3. Telephone	Alt. Phone	E-mail Address	

B. YOUR ATTORNEY'S INFORMATION (If Applicable – See Instructions)

1. Attorney's Name			
2. Firm Name			
3. Street Address			
City	State/Province	Zip/Postal Code	Country
4. Telephone	Fax	E-mail Address	

Please be advised that pursuant to 5 CFR 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

C. TELL US ABOUT YOUR TIP OR COMPLAINT

1a. How did you submit original information to the CFTC? Website [ ] Mail [ ] Fax [ ] Other [ ]	1b. Date that you submitted the information (mm/dd/yyyy)
2a. Did you file a CFTC Form TCR? YES [ ] NO [ ]	
2b. Form TCR Number	2c. Date that you filed your Form TCR (mm/dd/yyyy)
3. Name(s) of the individual(s) and/or entity(s) to which your tip or complaint relates	

D. NOTICE OF COVERED ACTION

1. Date of relevant Notice of Covered Action (mm/dd/yyyy)	2. Notice Number
3a. Case Name	3b. Case Number

E. CLAIMS PERTAINING TO RELATED ACTIONS

1. Name of other agency or organization to which you provided your information	
2. Name and contact information for point of contact at the agency or organization, if known	
3a. Date that you provided the information (mm/dd/yyyy)	3b. Date of action by the agency or organization (mm/dd/yyyy)
4a. Case Name	4b. Case Number

F. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Are you currently, or were you at the time that you acquired the original information that you submitted to the CFTC, a member, officer or employee of: the CFTC; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; a law enforcement organization; or a foreign regulatory authority or law enforcement organization?

YES [ ] NO [ ]

2. Did you provide the information identified in Section C above pursuant to a cooperation agreement with the CFTC or another agency or organization?

YES [ ] NO [ ]

3. Before you provided the information identified in Section C above, did you (or anyone representing you) receive any request, inquiry or demand that relates to the subject matter of your submission (i) from the CFTC, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority?

YES [ ] NO [ ]

4. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the information identified in Section C above and upon which your application for an award is based?

YES [ ] NO [ ]

5. Did you acquire the information that you provided to the CFTC from any person described in Questions 1 through 4 above?

YES [ ] NO [ ]

6. If you answered "Yes" to any of Questions 1 through 5 above, please provide details. Use additional sheets, if necessary.

G. ENTITLEMENT TO AWARD

Explain the basis for your belief that you are entitled to an award in connection with your submission of information to the CFTC, or to another agency or organization in a related action. Provide any additional information that you think may be relevant in light of the criteria for determining the amount of an award set forth in Section 23 of the Commodity Exchange Act and Part 165 of the CFTC's regulations. Include any supporting documents in your possession or control, and use additional sheets, if necessary.

H. CLAIMANT'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the Commodity Futures Trading Commission, or my dealings with another agency or organization in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Print Name	
Signature	Date

I. COUNSEL CERTIFICATION

I certify that I have reviewed this form for completeness and accuracy and that the information contained herein is true, correct and complete to the best of my knowledge, information and belief. I further certify that I have verified the identity of the whistleblower award claimant on whose behalf this form is being submitted by viewing the claimant's valid, unexpired government issued identification (e.g., driver's license, passport) and will retain an original, signed copy of this form, with Section H signed by the claimant, in my records. I further certify that I have obtained the claimant's non-waivable consent to provide the Commodity Futures Trading Commission with his or her original signed Form WB-APP upon request, and that I consent to be legally obligated to do so within seven (7) calendar days of receiving such a request from the Commodity Futures Trading Commission.

Print Name of Attorney and Law Firm, if Applicable	
Signature	Date

BILLING CODE 6351–01–C

Privacy Act Statement

This notice is given under the Privacy Act of 1974. The Privacy Act requires that the Commodity Futures Trading Commission (CFTC) inform individuals of the following when asking for information. The solicitation of this information is authorized under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* The information provided will enable the CFTC to determine the whistleblower award claimant's eligibility for payment of an award pursuant to Section 23 of the Commodity Exchange Act and Part 165 of the CFTC's regulations. This information will be used to investigate and prosecute violations of the Commodity Exchange Act and the CFTC's regulations. This information may be disclosed to federal, state, local or foreign agencies or other authorities responsible for investigating, prosecuting, enforcing or implementing laws, rules or regulations implicated by the information consistent with the confidentiality requirements set forth in Section 23 of the Commodity Exchange Act and Part 165 of the CFTC's regulations. The information will be maintained and additional disclosures may be made in accordance with System of Records Notices CFTC–49, "Whistleblower Records" (exempted), CFTC–10, "Investigatory Records" (exempted), and CFTC–16, "Enforcement Case Files." The CFTC requests the last four digits of the claimant's Social Security Number for use as an individual identifier to administer and manage the whistleblower award program. Executive Order 9397 (November 22, 1943) allows federal agencies to use the Social Security Number as an individual identifier. Furnishing the information is voluntary. However, if an individual is providing information for the whistleblower award program, not providing required information may result in the individual not being eligible for award consideration.

Questions concerning this form may be directed to Commodity Futures Trading Commission, Whistleblower Office, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Submission Procedures

- This form *must* be used by persons making a claim for a whistleblower award in connection with information provided to the CFTC, or to another agency or organization in a related action. In order to be deemed eligible for an award, you must meet all the requirements set forth in Section 23 of the Commodity Exchange Act and Part 165 of the CFTC's regulations.
- You must sign the Form WB–APP as the claimant. If you wish to submit the Form WB–APP anonymously, you must do so through an attorney, your attorney must sign the Counsel Certification Section of the Form WB–APP that is submitted to the CFTC, and you must give your attorney your original signed Form WB–APP so that it can be produced to the CFTC upon request.
- During the whistleblower award claim process, your identity must be verified in a form and manner that is acceptable to the CFTC prior to the payment of any award.
  - ○ If you are filing your claim in connection with information that you provided to the CFTC, then your Form WB–APP, and any attachments thereto, must be received by the CFTC within ninety (90) days of the date of the Notice of Covered Action, or the date of a final judgment in a related action to which the claim relates.
  - ○ If you are filing your claim in connection with information that you provided to another agency or organization in a related action, then your Form WB–APP, and any attachments thereto, must be received by the CFTC as follows:
- If a final order imposing monetary sanctions has been entered in a related action at the time that you submit your claim for an award in connection with a CFTC action, you may submit your claim for an award in that related action on the same Form WB–APP that you use for the CFTC action.
- If a final order imposing monetary sanctions in a related action has not been entered at the time that you submit your claim for an award in connection with a CFTC action, you must submit your claim on Form WB–APP within ninety (90) days of the issuance of a final order imposing sanctions in the related action.
- If a final judgment imposing monetary sanctions in a related action has been entered and a Notice of Covered Action for a related covered judicial or administrative action has not been published, you may submit your claims for awards in both the covered judicial or administrative action and related action within ninety (90) days of the date of the Notice of Covered Action. The claims may be submitted on the same Form WB–APP.
- If a final order imposing monetary sanctions in a related action relates to a judicial or administrative action brought by the Commission under the Commodity Exchange Act that is not a covered judicial or administrative action, and therefore there would not be a Notice of Covered Action, you must submit your claim on Form WB–APP for an award in connection with the related action within ninety (90) calendar days following either (1) the date of issuance of a final order in the related action, if that date is after the date of issuance of the final judgment in the related Commission judicial or administrative action; or (2) the date of issuance of the final judgment in the related Commission judicial or administrative action, *i.e.*, the date the related action becomes a related action, if the date of issuance of the final order in the related action precedes the final judgment in the related Commission judicial or administrative action.
- To submit your Form WB–APP, you may print it and either submit it by mail to Commodity Futures Trading Commission, Whistleblower Office, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or by facsimile to (202) 418–5975. You also may submit this form electronically, through the web portal found on the CFTC's Web site at *http://www.cftc.gov,* which is also accessible from the CFTC Whistleblower Program Web site at *www.whistleblower.gov.*

Instructions for Completing Form WB–APP

General

All references to "you" and "your" are intended to mean the whistleblower award claimant.

Section A: Tell Us about Yourself

Questions 1–3: Please provide the following information about yourself:

- last name, first name, middle initial and the last four digits of your Social Security Number;
- complete address, including city, state and zip code;
- telephone number and, if available, an alternate number where you can be reached; and
- your email address (to facilitate communications, we strongly encourage you to provide an email address, especially if you are making your claim anonymously).

Section B: Your Attorney's Information

Complete this section only if you are represented by an attorney in this matter.

Questions 1–4: Provide the following information about your attorney:

- attorney's name;
- firm name;
- complete address, including city, state and zip code;
- telephone number and fax number; and
- email address.

Section C: Tell Us about Your Tip or Complaint

Question 1a: Indicate the manner in which you submitted your original information to the CFTC.

Question 1b: Provide the date on which you submitted your original information to the CFTC.

Question 2a: State whether you filed a CFTC Form TCR.

Question 2b: If you filed a CFTC Form TCR, provide the Form's number.

Question 2c: If you filed a CFTC Form TCR, provide the date on which you filed the Form.

Question 3: Provide the name(s) of the individual(s) and/or entity(s) to which your tip or complaint relates.

Section D: Notice of Covered Action

The process for making a claim for a whistleblower award for a CFTC action begins with the publication of a "Notice of Covered Action" on the CFTC's Web site. This Notice is published whenever a judicial or administrative action brought by the CFTC results in the imposition of monetary sanctions exceeding $1,000,000. The Notice is published on the CFTC's Web site subsequent to the entry of a final judgment or order in the action that by itself, or collectively with other judgments or orders previously entered in the action, exceeds the $1,000,000 threshold required for a whistleblower to be potentially eligible for an award. The CFTC will not contact whistleblower claimants directly as to Notices of Covered Actions; prospective claimants should monitor the CFTC Web site for such Notices.

Question 1: Provide the date of the Notice of Covered Action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3a: Provide the case name referenced in the Notice of Covered Action.

Question 3b: Provide the case number referenced in the Notice of Covered Action.

Section E: Claims Pertaining to Related Actions

Question 1: Provide the name of the agency or organization to which you provided your information.

Question 2: Provide the name and contact information for your point of contact at the agency or organization, if known.

Question 3a: Provide the date on which you provided your information to the agency or organization referenced in Question 1 of this section.

Question 3b: Provide the date on which the agency or organization referenced in Question 1 of this section filed the related action that was based upon the information that you provided.

Question 4a: Provide the case name of the related action.

Question 4b: Provide the case number of the related action.

Section F: Eligibility Requirements and Other Information

Question 1: State whether you are currently, or were at the time that you acquired the original information that you submitted to the CFTC, a member, officer or employee of: the CFTC; the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Board of Directors of the Federal Deposit Insurance Corporation; the Director of the Office of Thrift Supervision; the National Credit Union Administration Board; the Securities and Exchange Commission; the Department of Justice; a registered entity; a registered futures association; a self-regulatory organization; a law enforcement organization; or a foreign regulatory authority or law enforcement organization.

Question 2: State whether you provided the information that you submitted to the CFTC pursuant to a cooperation agreement with the CFTC, or with any other agency or organization.

Question 3: State whether you provided this information before you (or anyone representing you) received any request, inquiry or demand that relates to the subject matter of your submission (i) from the CFTC, (ii) in connection with an investigation, inspection or examination by any registered entity, registered futures association or self-regulatory organization, or (iii) in connection with an investigation by the Congress, or any other federal or state authority.

Question 4: State whether you are currently a subject or target of a criminal investigation, or whether you have been convicted of a criminal violation, in connection with the information that you submitted to the CFTC and upon which your application for an award is based.

Question 5: State whether you acquired the information that you provided to the CFTC from any individual described in Questions 1 through 4 of this section.

Question 6: If you answered yes to any of Questions 1 through 5 of this section, please provide details.

Section G: Entitlement to Award

This section is optional. Use this section to explain the basis for your belief that you are entitled to an award in connection with your submission of information to the CFTC, or to another agency in connection with a related action. Specifically, address why you believe that you voluntarily provided the CFTC with original information that led to the successful enforcement of a judicial or administrative action filed by the CFTC, or a related action. Refer to § 165.9 of Part 165 of the CFTC's regulations for further information concerning the relevant award criteria.

Section 23(c)(1)(B) of the Commodity Exchange Act and § 165.9(a) of Part 165 of the CFTC's regulations require the CFTC to consider the following factors in determining the amount of an award: (1) the significance of the information provided by a whistleblower to the success of the CFTC action or related action; (2) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the CFTC action or related action; (3) the programmatic interest of the CFTC in deterring violations of the Commodity Exchange Act (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; (4) whether the award otherwise enhances the CFTC's ability to enforce the Commodity Exchange Act, protect customers, and encourage the submission of high quality information from whistleblowers; and (5) potential adverse incentives from oversize awards. Address these factors in your response as well.

Section H: Claimant's Declaration

You must sign this Declaration if you are submitting this claim pursuant to the CFTC whistleblower program and wish to be considered for an award. If you are submitting your claim anonymously, you must do so through an attorney, and you must provide your attorney with your original signed Form WB–APP.

Section I: Counsel Certification

If you are submitting this claim pursuant to the CFTC whistleblower program anonymously, you must do so through an attorney, and your attorney must sign the Counsel Certification Section.

Issued in Washington, DC, on August 24, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Whistleblower Awards Process—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–20745 Filed 8–29–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB76

Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: In this document, the Department proposes to amend a regulation that describes how states may design and operate payroll deduction savings programs, using automatic enrollment, for private-sector employees without causing the states or private-sector employers to establish employee pension benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). The proposed amendments would expand the current regulation beyond states to cover programs of qualified state political subdivisions that otherwise comply with the current regulation. This rule would affect individuals and employers subject to such programs.

DATES: Written comments should be received on or before September 29, 2016.

ADDRESSES: You may submit comments, identified by RIN 1210–AB76, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.* Include RIN in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees.

Instructions: All submissions must include the agency name and Regulatory Identification Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged to submit only by one electronic method and not to submit paper copies. Comments will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Suite N–1513, 200 Constitution Avenue NW., Washington, DC 20210. WARNING: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records and are posted on the Internet as received, and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Janet Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in today's **Federal Register**, the Department issued a final regulation describing conditions that would allow state governments to establish payroll deduction savings programs, with automatic enrollment, for private-sector employees without the state or the employers of those employees being treated as establishing employee pension benefit plans under ERISA. The final regulation is published in response to legislation in some states, and strong interest by others, to encourage retirement savings by giving private-sector employees broader access to savings arrangements through their employers. The final regulation is effective as of October 31, 2016.

As noted in the preamble to the final regulation, concerns that tens of millions of American workers do not have access to workplace retirement savings arrangements have led some states to establish programs that allow private-sector employees to contribute payroll deductions to tax-favored individual retirement accounts described in 26 U.S.C. 408(a) or individual retirement annuities described in 26 U.S.C. 408(b), including Roth IRAs described in 26 U.S.C. 408A (IRAs), offered and administered by the states. California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines.[1] These initiatives generally require certain employers that do not offer workplace savings arrangements to automatically deduct a specified amount of wages from their employees' paychecks unless the employee affirmatively chooses not to participate in the program. The employers are also required to remit the payroll deductions to state-administered IRAs established for the employees. These programs also allow employees to stop the payroll deductions at any time. None of the initiatives require employers to make matching or other contributions of their own to employee accounts. Some expressly bar such contributions and others do not address this matter. In addition, the state initiatives typically require that employers provide employees with information prepared or assembled by the program, including information on employees' rights and various program features.

As indicated in the preamble to the final rule, some states expressed concern that these payroll deduction savings programs could cause either the state or covered employers to inadvertently establish ERISA-covered plans, despite the express intent of the states to avoid such a result. This concern is based on ERISA's broad definition of "employee pension benefit plan" and "pension plan," which are defined in relevant part as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program provides retirement income to employees."[2] The Department and the courts have broadly interpreted "established or maintained" to require only minimal involvement by an employer or employee organization.[3] An employer could, for example, establish an employee benefit plan simply by purchasing insurance products for individual employees. These expansive definitions are essential to ERISA's purpose of protecting plan participants by ensuring the security of promised benefits. Although ERISA does not govern plans established by states for their own employees, it governs nearly all plans established by private-sector employers for their employees.

With certain exceptions, ERISA preempts state laws that relate to ERISA-covered employee benefit plans.[4] Thus, if a state program were to require employers to take actions that effectively caused them to establish ERISA-covered plans, the state law underlying the program would likely be preempted. Similarly, ERISA would likely preempt a state law mandating private-sector employers to enroll their employees in an ERISA plan established by the state.

A. The Department's Rulemaking Regarding State Payroll Deduction Savings Initiatives

The Department responded to the states' concerns by publishing in today's **Federal Register** a final safe harbor regulation describing specific circumstances in which state payroll deduction savings programs with automatic enrollment would not give rise to the establishment of employee pension benefit plans under ERISA. As a result, the final regulation helps states (but not political subdivisions) establish and operate payroll deduction savings programs so as to reduce the risk of ERISA preemption by avoiding the establishment of ERISA-covered plans.

B. Public Comments on Political Subdivisions

In both the 2015 proposed rule, and the current final rule, the Department defines the term "State" to have the same meaning as given to that term in section 3(10) of ERISA.[5] That section, in relevant part, provides that the term State "includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, [and] Wake Island." The effect of the definition is to limit the scope of the safe harbor to the fifty states and these other jurisdictions.

---

[1] California Secure Choice Retirement Savings Trust Act, Cal. Gov't Code §§ 100000–100044 (2012); Connecticut Retirement Security Program Act, P.A. 16–29 (2016); Illinois Secure Choice Savings Program Act, 820 Ill. Comp. Stat. 80/1–95 (2015); Maryland Small Business Retirement Savings Program Act, Ch. 324 (H.B. 1378) (2016); Oregon Retirement Savings Board Act, Ch. 557 (H.B. 2960) (2015).

[2] 29 U.S.C. 1002(2)(A). ERISA's Title I provisions "shall apply to any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce." 29 U.S.C. 1003(a). Section 4(b) of ERISA includes express exemptions from coverage under Title I for governmental plans, church plans, plans maintained solely to comply with applicable state laws regarding workers compensation, unemployment, or disability, certain foreign plans, and unfunded excess benefit plans. 29 U.S.C. 1003(b).

[3] *Donovan* v. *Dillingham*, 688 F.2d 1367 (11th Cir. 1982); *Harding* v. *Provident Life and Accident Ins. Co.*, 809 F. Supp. 2d 403, 415–419 (W.D. Pa. 2011); DOL Adv. Op. 94–22A (July 1, 1994).

[4] ERISA section 514(a), 29 U.S.C. 1144(a).

[5] On November 18, 2015, the Department published in the **Federal Register** a proposed regulation providing that for purposes of Title I of ERISA the terms "employee pension benefit plan" and "pension plan" do not include an IRA established and maintained pursuant to a state payroll deduction savings program if that program satisfies all of the conditions set forth in the proposed rule. 80 FR 72006. On the same day that proposal was published, the Department also published an interpretive bulletin explaining the Department's views concerning the application of ERISA section 3(2)(A), 29 U.S.C. 1002(2)(A), section 3(5), 29 U.S.C. 1002(5), and section 514, 29 U.S.C. 1144 to certain state laws designed to expand retirement savings options for private-sector workers through state-sponsored ERISA-covered retirement plans. 80 FR 71936 (codified at 29 CFR 2509.2015–02). Although discussed in the context of a state as the responsible governmental body, in the Department's view the principles articulated in

The Department received multiple comments on the 2015 proposed rule concerning this definition. Several commenters believed this definition is too narrow and supported a broader definition in the final rule. They expressed their support, in general, for a definition that would cover not only state payroll deduction savings programs, but also payroll deduction savings programs of political subdivisions, such as counties and cities.

Set forth below are the commenters' main arguments in favor of expanding the safe harbor to include political subdivisions:

1. *Expansion of the safe harbor to political subdivisions will increase retirement savings.* Many U.S. workers will continue to be deprived of a workplace savings opportunity unless the safe harbor is expanded to cover payroll deduction savings programs of political subdivisions.[6] Where states do not establish state-wide programs, political subdivisions within those states may be willing to do so, but are hesitant to act unless the safe harbor is expanded to clearly cover them.[7] Expanding the safe harbor, therefore, would expand retirement savings coverage, especially in states that do not themselves establish state-level payroll deduction savings programs but do have political subdivisions that would be willing to do so.[8]

2. *Expansion of the safe harbor to political subdivisions is supported by section 3(2) of ERISA.* The legal basis for the current safe harbor for state programs would not suggest a different result for payroll deduction savings programs established by state political subdivisions that otherwise meet the safe harbor's conditions. Employers that facilitate payroll deduction contributions to an IRA as required by the law of a political subdivision cannot logically be viewed as engaging in more or less involvement than employers that perform the same functions as required by the law of a state. In both cases, employers participate under a legal requirement and are limited to ministerial activity, such as withholding and remitting wages to an IRA custodian. Consequently, the standard for determining whether, under section 3(2) of ERISA, an "employee pension benefit plan" has been "established or maintained" should be the same in both cases. There simply is no legal basis for not expanding the safe harbor to political subdivisions.[9]

3. *Expansion of the safe harbor to political subdivisions will not unduly burden employers.* The safe harbor requires the state to administer the payroll deduction savings program. The safe harbor also forbids employers from involvement other than enrolling employees (or processing their opt-out requests), transmitting payroll deductions, and communicating state-developed explanatory materials. There is no variability in these conditions across political jurisdictions or state lines. Thus, extending the safe harbor to political subdivisions would create only a minimal burden on employers because they are limited to these few ministerial functions, even if the employer operates in multiple jurisdictions and is subject to multiple payroll deduction savings programs.[10] Commenters further argue that most employers in multiple jurisdictions will be unaffected because they already offer retirement plans, the offering of which would exempt the employers from payroll deduction savings programs of state and political subdivisions.[11]

4. *Expansion of the safe harbor could be limited to certain political subdivisions.* To the extent there are concerns regarding the ability of smaller governmental authorities to appropriately oversee and safeguard payroll deduction savings programs, commenters have suggested that an expanded safe harbor could be restricted to political subdivisions that meet certain criteria.[12] For example, the safe harbor could be extended to political subdivisions that meet a minimum population requirement, such as a population equal to or greater than the least populous state.[13] Another criterion could be sponsorship of a governmental employee pension plan with a certain amount of assets.[14] These criteria could indicate that the political subdivision has appropriate experience and infrastructure to operate a payroll deduction savings program.[15] Another criterion could be that the political subdivision is not in a state that has established its own payroll deduction savings program.[16] Any combination of these criteria could be used to limit the safe harbor. Several commenters also suggested that political subdivisions could be required to petition the Department for approval to establish a payroll deduction savings program.[17]

5. *Expansion of the safe harbor will not conflict with state initiatives.* Permitting political subdivisions to establish payroll deduction savings programs will not necessarily result in interference with state initiatives in this area. States generally have the authority to determine whether their political subdivisions may and should establish payroll deduction savings programs; determinations such as these are matters to be resolved between the states and their political subdivisions. If a state legislature chooses to create a program for the entire state, that program could simply preempt or incorporate any existing city-level payroll deduction savings program.[18]

The Department agrees with commenters that there may be good reasons for expanding the safe harbor to cover political subdivisions. It is not clear to the Department, however, how many such political subdivisions would have an interest in establishing programs of the kind described in the

---

the Interpretive Bulletin regarding marketplace arrangements and sponsorship of ERISA-covered plans also apply with respect to laws of a political subdivision, provided applicable conditions in the bulletin can be and are satisfied by the political subdivision.

[6] *See, e.g.,* Comment Letter #57 (Public Advocate for the City of New York).

[7] *See, e.g.,* Comment Letter #38 (City of New York Office of Comptroller) and Comment Letter #42 (City of New York Office of the Mayor). *See also* Letter from Alan L. Butkovitz, City Controller, Philadelphia to Hon. Thomas E. Perez and Phyllis C. Borzi (April 7, 2016).

[8] *See, e.g.,* Comment Letter #41 (Georgetown University Center for Retirement Initiatives).

[9] *See, e.g.,* Comment Letter #65 (Pension Rights Center).

[10] *See, e.g.,* Comment Letter #38 (City of New York Office of the Comptroller), Comment Letter #42 (City of New York Office of the Mayor), and Comment Letter #58 (Service Employee International Union and others).

[11] *See, e.g.,* Comment Letter #38 (City of New York Office of the Comptroller) and Comment Letter #58 (Service Employee International Union and others).

[12] *Id. See also* Letter from Seattle City Councilmember Tim Burgess to Hon. Thomas E. Perez and Phyllis C. Borzi (April 11, 2016).

[13] *Id.*

[14] *See, e.g.,* Comment Letter #42 (City of New York Office of the Mayor).

[15] *See, e.g.,* Comment Letter #36 (AFL–CIO) and Comment Letter #38 (City of New York Office of the Comptroller).

[16] *See, e.g.,* Comment Letter #38 (The City of New York Office of the Comptroller), Comment Letter #56 (Aspen Institute Financial Security Program), and Comment Letter #63 (Tax Alliance for Economic Mobility).

[17] *See, e.g.,* Comment Letter #20 (New America), Comment Letter #56 (Aspen Institute Financial Security Program), and Comment Letter #63 (Tax Alliance for Economic Mobility).

[18] *See, e.g.,* Comment Letter #57 (Public Advocate for the City of New York).

final safe harbor regulation.[19] It also is not clear how many political subdivisions would have authority to establish such programs and to require employer participation in such programs. Assuming that at least some political subdivisions could comply with the conditions of the current safe harbor for states, the Department believes that it is important to consider whether these political subdivisions' programs should be included in the safe harbor and that the Department's analysis of the issue would benefit from additional public comments. Accordingly, the Department is publishing this notice of proposed rulemaking soliciting further comments on whether and how the safe harbor should be expanded to state political subdivisions.

II. Overview of Proposed Rule

The proposal would amend paragraph (h) of § 2510.3–2 to add the term "or qualified political subdivision" wherever the term "State" appears in the current regulation. Thus, the regulation's safe harbor provisions would apply in the same manner to payroll deduction savings programs of qualified political subdivisions as they currently apply to state programs. The proposal would add a new paragraph (h)(4) to define the term "qualified political subdivision." Proposed paragraph (h)(4) would define qualified political subdivision as any governmental unit of a state, including any city, county, or similar governmental body that meets three criteria. First, the political subdivision must have the authority, implicit or explicit, under state law to require employers' participation in the payroll deduction savings program. Second, the political subdivision must have a population equal to or greater than the population of the least populous state.[20] Third, the political subdivision cannot be within a state that has a state-wide retirement savings program for private-sector employees. The definition in paragraph (h)(4) of the proposal would not apply for other purposes under ERISA, such as for determining whether an entity is a political subdivision for purposes of the definition of a "governmental plan" in section 3(32) of ERISA, 29 U.S.C. 1002(32).

According to the U.S. Census Bureau, there are approximately 90,000 local governmental units that could be considered "political subdivisions" for purposes of the proposed regulation.[21] Of this number, there are approximately 40,000 "general-purpose" political subdivisions in the United States, which include county governments, municipal governments, and township governments.[22] The remaining approximately 50,000 political subdivisions are so-called "special-purpose" political subdivisions that perform only one function or a very limited number of functions, such as school districts, utility districts, water and sewer districts, and transit authorities.[23] The number of political subdivisions within each state varies widely across the nation, with Illinois, Minnesota, Pennsylvania, and Ohio having over 2,000 general-purpose subdivisions, while Hawaii has only four.[24] In addition, the populations of political subdivisions range greatly in size, for example, from 10,170,292 (Los Angeles County) to 1 (Monowi Village, Nebraska).[25]

Given these statistics, the proposed definition is intended to reduce the number of political subdivisions that would be able to fit within the safe harbor to a small subset of the total number of political subdivisions in the U.S. The Department is sensitive to the issue regarding the potential for overlapping programs to apply, for example, to an employer that might be operating in a state (or states) with multiple political subdivisions. In addition, given that the vast majority of political subdivisions are relatively small in terms of population (approximately 83% have populations of less than 10,000 people), the Department also is sensitive to the issue of whether smaller political subdivisions have the ability to oversee and safeguard payroll deduction savings programs.[26] A narrow expansion of the safe harbor would address these concerns.

The proposal's first limit on the number of political subdivisions is the criterion that, to be within the safe harbor, the political subdivision must have the authority under state law to require employers within its jurisdiction to participate in the payroll deduction savings program, including in particular, the power to require wage withholding in the case of programs with automatic enrollment.[27] *See* paragraph (h)(4)(i) of this proposal. As proposed, this requirement does not mean that a state law must explicitly authorize the political subdivision to establish the program at issue, but the political subdivision would need to have authority, implicit or explicit, under state law to establish and operate the program and compel employer participation. The Department understands that this criterion (*i.e.*, that the political subdivisions have the ability to compel employer participation) will have the effect of limiting the proposed definition, and therefore the scope of the safe harbor, to so-called "general-purpose" subdivisions, meaning political subdivisions with authority to exercise traditional sovereign powers, such as the power of taxation, the power of eminent domain, and the police power. The Department does not expect that "special-purpose" subdivisions, such as utility districts or transit authorities, ordinarily will have this kind of authority under state law. This limitation is expected to reduce the universe of potential political subdivisions to approximately 40,000 from the approximately 90,000 total.

Commenters suggested three specific additional criteria that could be used to narrow this universe of approximately 40,000 political subdivisions even further. The first suggested criterion is that a political subdivision would have a population equal to or greater than the population of the least populous state.[28] The second suggested criterion is that the state in which the political subdivision exists does not have a state-wide retirement savings program for private-sector employees. The third suggested criterion is that a political subdivision would have demonstrated capacity to design and operate a payroll deduction savings program, such as by maintaining a pension plan with substantial assets for employees of the political subdivision.[29]

---

[19] Thus far, the Department has received written letters of interest from representatives of Philadelphia, New York City, and Seattle.

[20] For this purpose, the term "state" does not include the non-state authorities listed in section 3(10) of ERISA. Thus, it does not include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and Wake Island.

[21] The U.S. Census Bureau's count for 2012 (the most recent data available). The U.S. Census Bureau produces data every 5 years as a part of the Census of Governments in years ending in "2" and "7." *See* U.S. Census Bureau, Government Organization Summary Report: 2012 Census of Governments (*http://www.census.gov/govs/cog/index.html*).

[22] The U.S. Census Bureau's count of general-purpose political subdivisions for 2012 was 38,910 (3,031 counties, 19,519 municipalities, and 16,360 townships). *Id.*

[23] The Census Bureau's count of special-purpose political subdivisions for 2012 was 51,146. Special-purpose political subdivisions include school districts and all other single or limited purpose political subdivisions, known by a variety of titles, including districts, authorities, boards, and commissions. *Id.*

[24] Illinois has 2,831, Minnesota has 2,724, Pennsylvania has 2,627 and Ohio has 2,333 general-purpose political subdivisions. Note also that the District of Columbia has only one general-purpose political subdivision. *See* U.S. Census Bureau, Local Governments by Type and State: 2012 Census of Governments (*http://www.census.gov/govs/cog/index.html*).

[25] U.S. Census Bureau, Annual Estimates of the Resident Population for Counties: 2015 Population Estimate (*http://www.census.gov/popest/data/counties/totals/2015/index.html*); U.S. Census Bureau, Annual Estimates of the Resident Population for Cities and Towns (Incorporated Places and Minor Civil Divisions): 2015 Population Estimate (*https://www.census.gov/popest/data/cities/totals/2015/index.html*).

[26] U.S. Census Bureau, County Governments by Population-Size Group and State: 2012 Census of Governments; U.S. Census Bureau; Subcounty Governments by Population-Size Group and State: 2012 Census of Governments (*http://www.census.gov/govs/cog/index.html*).

[27] This criterion not only limits the number of political subdivisions that would be eligible for the safe harbor, it also is central to the Department's analysis under section 3(2) of ERISA and the conclusion that employers are not establishing or maintaining ERISA-covered plans.

The proposal adopts only the first two criteria suggested by the commenters. To be within the safe harbor, the proposal would require that the political subdivision have a population equal to or greater than the population of the least populous State (excluding the District of Columbia and territories listed in section 3(10) of the ERISA). *See* paragraph (h)(4)(ii) of this proposal. Based on the most recently available U.S. Census Bureau statistics, Wyoming is the least populous state, with approximately 600,000 residents. The Department has two primary policy reasons for adopting this criterion. First, it is important to the Department that the proposal not expand the safe harbor to political subdivisions that may not have the experience, capacity, and resources to safely establish and oversee payroll deduction savings programs in a manner that is sufficiently protective of employees. The existing public record does not convince the Department that small political subdivisions in general have comparable experience, resources, and capacity to those of the least populous state.[30] Second, it is important to the Department that the proposal reduce the possibility that employers would be subject to a multiplicity of overlapping political subdivision programs. This criterion would significantly reduce the possibility of overlap by limiting the universe of potentially eligible political subdivisions from approximately 40,000 to a subset of approximately 136 political subdivisions.[31]

In addition, the proposal would further condition the safe harbor on the political subdivision not being in a state that has a state-wide retirement savings program for private-sector employees. *See* paragraph (h)(4)(iii) of this proposal. For instance, eight states presently have adopted laws to implement some form of state-wide savings program for private-sector employees.[32] This criterion would exclude from the safe harbor approximately 48 additional political subdivisions with populations equal to or greater than the population of Wyoming, thereby limiting the universe of potentially eligible political subdivisions to approximately 88.[33] The criterion is intended to mitigate overlap and duplication in circumstances where it is most likely to exist, and contemplates, but is not necessarily limited to, those state retirement savings programs described in the safe harbor rule at 29 CFR 2510.3–2(h) and the Department's Interpretive Bulletin at 29 CFR 2509.2015–02.

The Department also is considering the possibility of further limiting the universe of potentially eligible political subdivisions. The Department is considering whether to add the third criterion suggested by the commenters that would require that political subdivisions have a demonstrated capacity to design and operate a payroll deduction savings program, such as by maintaining a pension plan with substantial assets for employees of the political subdivision. Whereas the "smallest state" criterion in paragraph (h)(4)(ii) of the proposal would assume that political subdivisions have sufficient experience, capacity, and resources to safely establish and oversee a payroll deduction savings program by using population as a proxy for evidence of these characteristics, this criterion would require direct and objectively verifiable evidence of this ability. For example, a political subdivision that establishes and maintains a large defined benefit plan for its governmental employees would be more likely to have sufficient experience, capacity, and resources to design and operate a payroll deduction savings program.

III. Solicitation of Comments

The Department seeks comments on all aspects of this proposal. Although general comments and views on whether or not the safe harbor should be expanded to cover political subdivisions are solicited, the Department is especially interested in comments on the proposed definition of "qualified political subdivision" in paragraph (h)(4). Specifically, commenters are encouraged to focus on the three specific limiting criteria in paragraphs (i), (ii), and (iii) of (h)(4) of the proposal, and to address the following operational questions.

With respect to paragraph (h)(4)(ii) of the proposal (requiring the political subdivision to have a population equal to or greater than the population of the least populous state), comments are solicited on whether the final regulation should contain a provision to address the possibility of fluctuating populations of states and political subdivisions and the consequences of a qualified political subdivision falling below the required population threshold after it has already established and is administering a payroll deduction savings program. For instance, determinations under paragraph (h)(4)(ii) could be made at a fixed point in time and preserved, such that future changes in populations of the state, political subdivision, or both would not affect the program's status under the safe harbor. The phrase "at the time it establishes its payroll deduction savings program," for example, could be added to the end of paragraph (h)(4)(ii) of the proposal to accomplish this result.

With respect to paragraph (h)(4)(iii) of the proposal (relating to situations in which a state has a preexisting state-wide retirement savings program), comments are solicited on whether the final regulation should address the effect on the status of a payroll deduction savings program of a qualified political subdivision if the state in which the subdivision is located establishes a state-wide retirement savings program after the subdivision has established and operates a payroll deduction savings program. If a state were to establish a state-wide program after one of its subdivisions previously had done so, presumably the state would take into account the nature and existence of the subdivision's program and act in a measured and calculated way so as to avoid or mitigate any undesirable overlap, in which case the final regulation need not address the issue. For example, the state could act by displacing the subdivision's program after a transition period or coordinating the state and subdivision programs. Either approach would mitigate overlap. In addition, for an employer that had employees in two adjoining states, overlap could be avoided or mitigated by coordination among the states (including their political subdivisions) to, for example, exempt any employer that complied with any state (or political subdivision) program or sponsored a workplace savings arrangement. The intent of such approaches could be to ensure that employers would never be subject to more than one state (or political subdivision) program.

---

[28] Wyoming is the least populated state in the U.S., with a population of 586,107. *See* U.S. Census Bureau, Annual Estimates of the Resident Population for States: 2015 Population Estimate (*https://www.census.gov/popest/data/state/totals/2015/index.html*).

[29] New York City, for instance, has five different pension funds with their combined $160 billion in assets and a deferred compensation plan with over $15 billion in assets. *See* Comment Letter # 42 (City of New York Office of Mayor) and Comment Letter #38 (City of New York Office of Comptroller).

[30] The regulation does not preclude these smaller political subdivisions from establishing their own programs, but for policy reasons the Department chooses not to extend safe harbor status to such programs.

[31] As of 2015, there were approximately 136 general-purpose political subdivisions with populations equal to or greater than the population of Wyoming.

[32] California Secure Choice Retirement Savings Trust Act, Cal. Gov't Code §§ 100000–100044 (2012); Connecticut Retirement Security Program Act, Pub. Act. 16–29 (2016); Illinois Secure Choice Savings Program Act, 820 Ill. Comp. Stat. 80/1–95 (2015); Maryland Small Business Retirement Savings Program Act, ch. 324 (H.B. 1378) (2016); Mass. Gen. Laws ch. 29, § 64E (2012); New Jersey Small Business Retirement Marketplace Act, Pub. L. 2015, ch. 298; Oregon Retirement Savings Board Act, ch. 557 (H.B. 2960) (2015); Washington State Small Business Retirement Savings Marketplace Act, Wash. Rev. Code §§ 43.330.730–750 (2015).

[33] *Supra* at footnote 25.

Also with respect to paragraph (h)(4)(iii) of the proposal, comments are solicited on whether the final regulation should expand this provision to cover, for example, those situations in which a political subdivision, encompassed within the jurisdictional boundaries of a larger political subdivision that already maintains a retirement savings program, seeks to establish a payroll deduction savings program. For instance, if a county in a state without a state-wide retirement savings program were to establish a county-wide retirement savings program, the question is whether paragraph (h)(4)(iii) of the proposal should be expanded to preclude a city in (or in part of) that county from thereafter being considered a qualified political subdivision. Thus, in much the same way that paragraph (h)(4)(iii) of the proposal would mitigate overlap across the entire state, the expansion discussed in this paragraph could mitigate overlap across political subdivisions, in circumstances in which there is no state-wide retirement savings program.

In addition, commenters are encouraged to focus on the criterion relating to a demonstrated capacity to design and operate a payroll deduction savings program. As mentioned above, this criterion is being considered by the Department, but is not included in paragraph (h)(4) of the proposal. Comments on what objective evidence could be used by political subdivisions to establish that they have sufficient experience, capacity, and resources to design and operate a payroll deduction savings program would be particularly useful.

Some commenters, by contrast, suggested fewer limitations than what is included in paragraph (h)(4) of the proposal. These commenters believe that the only limitation needed is the one in paragraph (h)(4)(i) of the proposal (*i.e.,* the political subdivision must have the requisite authority, implicit or explicit, under state law to require the employer's participation in the program). The Department requests that commenters also address this approach and whether, and to what extent, overlap would be a problem under this approach and if not, why. Further, if the safe harbor is expanded to qualified political subdivisions, commenters are encouraged to address whether the conditions of the existing safe harbor should differ in any way as applied to the qualified political subdivisions. In addition, the Department is interested in additional comments on other criteria, not discussed in this proposal, which might be used to refine the definition of qualified political subdivision in the proposed regulation or other facets of the safe harbor more generally.

IV. Regulatory Impact Analysis

A. Executive Order 12866 Statement

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and review by OMB. Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as an "economically significant" action); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has tentatively determined that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, it has determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the proposed rule and the Department provides the following assessment of its benefits and costs.

B. Background and Need for Regulatory Action

As discussed in detail above in Section I of this preamble, several commenters on the 2015 proposal urged the Department to expand the safe harbor to include payroll deduction savings programs established by political subdivisions of states. In particular, the commenters argued that the proposal would be of little or no use for employees of employers in political subdivisions in states that choose not to have a state-wide program, even though there is strong interest in a payroll deduction savings program at a political subdivision level, such as New York City, for example. Certain commenters asked the Department to consider extending the safe harbor to large political subdivisions (in terms of population) with authority and capacity to maintain such programs.

The Department stated in the final rule that it agrees with these commenters but believes that its analysis of the issue would benefit from additional public comments. Accordingly, the Department is publishing this notice of proposed rulemaking, which would amend paragraph (h) of § 2510.3–2 to cover payroll deduction savings programs of qualified political subdivisions, as defined in paragraph (h)(4) of this proposal.

C. Benefits and Costs

In analyzing benefits and costs associated with this proposed rule, the Department focuses on the direct effects, which include both benefits and costs directly attributable to the rule. These benefits and costs are limited, because as stated above, the proposed rule would merely establish a safe harbor describing the circumstances under which a qualified political subdivision with authority under state law could establish payroll deduction savings programs that would not give rise to ERISA-covered employee pension benefit plans. It does not require qualified political subdivisions to take any actions nor employers to provide any retirement savings programs to their employees.

The Department also addresses indirect effects associated with the proposed rule, which include (1) potential benefits and costs directly associated with the requirements of qualified political subdivision payroll deduction savings programs, and (2) the potential increase in retirement savings and potential cost burden imposed on covered employers to comply with the requirements of such programs. Indirect effects vary by qualified political subdivisions depending on their program requirements and the degree to which the proposed rule might influence political subdivisions to design their payroll deduction savings programs.

1. Direct Benefits

The Department believes that political subdivisions and other stakeholders would directly benefit from the proposal to expand the scope of the safe harbor to include payroll deduction savings programs established by qualified political subdivisions eligible for the safe harbor rule. Similar to the states, this will provide political subdivisions with clear guidelines to determine the circumstances under which programs they create for private-sector workers would not give rise to the establishment of ERISA-covered plans. The Department expects that the proposed rule would reduce legal costs, including litigation costs political subdivisions would incur, by (1) removing uncertainty about whether such political subdivision payroll deduction savings programs give rise to the establishment of plans that are covered by Title I of ERISA, and (2) creating efficiencies by eliminating the need for multiple political subdivisions to incur the same costs to determine that their programs would not give rise to the establishment of ERISA-covered plans. However, these benefits would be limited to qualified political subdivisions meeting all criteria set forth in this proposed rule. Those governmental units of a state, including any city, county, or similar governmental body that are not eligible to use the safe harbor may incur legal costs if they elect to establish their own payroll deduction savings programs. Furthermore, the population size criterion inherently induces uncertainty about eligibility status because population sizes of both states and political subdivisions change over time due to births, deaths, and migrations. Some political subdivisions currently meeting the safe harbor criteria may face uncertainty and incur legal costs later if they fail the population test after they establish their own payroll deduction savings programs.[34] This uncertainty about the eligibility status may deter some political subdivisions that barely meet the population size requirement from establishing their own payroll deduction savings programs, especially if their populations are projected to decline or to remain steady compared to the population growth of the least populous state in near future. For example, a currently qualified political subdivision interested in establishing its own payroll deduction savings program may not do so if it is unsure whether it can continuously meet the population criterion set forth in this proposed rule. Similarly, some qualified political subdivisions may face uncertainty if their states establish a state-wide retirement savings programs later. Thus, although the Department estimates approximately 88 political subdivisions could become qualified under this proposed rule, some qualified political subdivisions may not consider themselves as qualified in a practical sense based on the uncertainty regarding their population growth and their states' decisions in near future. Even beyond that, some political subdivisions may have no interest in establishing payroll deduction savings programs without regard to the safe harbor in the proposal.

The Department notes that the proposed rule would not prevent political subdivisions from identifying and pursuing alternative policies, outside of the safe harbor, that also would not require employers to establish or maintain ERISA-covered plans. Thus, while the proposed rule would reduce uncertainty about political subdivision activity within the safe harbor, it would not impair political subdivision activity outside of it. This proposed regulation is a safe harbor and as such, does not require employers to participate in qualified political subdivision payroll deduction savings programs; nor does it purport to define every possible program that does not give rise to the establishment of ERISA-covered plans.

2. Direct Costs

The proposed rule does not require any new action by employers or the political subdivisions. It merely establishes a safe harbor describing certain circumstances under which qualified political subdivision-required payroll deduction savings programs would not give rise to an ERISA-covered employee pension benefit plan and, therefore, should not be preempted by ERISA. Political subdivisions may incur legal costs to analyze the rule and determine whether their programs fall within the safe harbor. However, the Department expects that these costs will be less than the costs that would be incurred in the absence of the proposed rule. Some political subdivisions currently developing payroll deduction savings programs would need to monitor their current population to assess their eligibility for the safe harbor, projected population sizes as well as the least populous state's size. However, the Department expects these monitoring costs to be small, because such monitoring activity generally would be confined to political subdivisions with a population size similar to the least populous state. Similarly, some political subdivisions interested in developing their own payroll deduction savings programs would also need to monitor states' activities regarding state-wide retirement savings programs and communicate with states to mitigate any undesirable overlap.

Qualified political subdivisions may incur administrative and operating costs including mailing and form production costs. These potential costs are not directly attributable to the proposed rule; however, they are attributable to the political subdivision's creation of the payroll deduction savings program pursuant to its authority under state law. Some commenters on the 2015 proposed rule expressed the concern that smaller political subdivisions without the experience or capabilities to administer a payroll deduction savings program may contemplate creating and operating their own programs if the safe harbor rule is extended to all political subdivisions without any restrictions. This proposed rule addresses this concern by limiting eligibility for the safe harbor rule based on a political subdivision's population size, assuming larger political subdivisions are more likely than smaller ones to have sufficient existing resources, experience, and infrastructure to create and implement payroll deduction savings programs.

3. Uncertainty

The Department is confident that the proposed safe harbor rule, by clarifying that qualified political subdivision programs do not require employers to establish ERISA-covered plans, will benefit political subdivisions and many other stakeholders otherwise beset by greater uncertainty. However, the

---

[34] According to 1980 Census, Alaska was the least populated state but in 2010, it followed Wyoming and Vermont as the third smallest state. Wyoming was the least populated state in 2000 and 2010. A number of counties and cities that were more populated than Wyoming in 2000 became less populated than Wyoming in 2010. For example, to name a few, Delaware County in Pennsylvania, New Castle County in Delaware, Summit County in Ohio, Union County in New Jersey were larger than Wyoming by population in 2000 yet became smaller by 2010. Another example would be Las Vegas city in Nevada. Las Vegas city was smaller than Wyoming in 2000 but it surpassed Wyoming in population size by 2010.

Department is unsure as to the magnitude of the benefits, costs and transfer impacts of these programs, because they will depend on the qualified political subdivisions' independent decisions on whether and how best to take advantage of the safe harbor and on the cost that otherwise would have been attached to uncertainty about the legal status of the qualified political subdivisions' actions. The Department is also unsure of (1) the proposed rule's effects on political subdivisions that do not meet the safe harbor criteria, (2) whether any of these ineligible political subdivisions are currently developing their own payroll deduction savings programs, and (3) the extent to which ineligible political subdivisions would be discouraged from designing and implementing payroll deduction savings programs. The Department cannot predict what actions political subdivisions will take, stakeholders' propensity to challenge such actions' legal status, either absent or pursuant to the proposed rule, or courts' resultant decisions.

4. Indirect Effects: Impact of Qualified Political Subdivision Payroll Deduction Savings Programs

As discussed above, the impact of qualified political subdivision payroll deduction savings programs is directly attributable to the qualified political subdivision legislation that creates such programs. As discussed below, however, under certain circumstances, these effects could be indirectly attributable to the proposed rule. For example, it is conceivable that more qualified political subdivisions could create payroll deduction savings programs due to the clear guidelines provided in the proposed rule and the reduced risk of an ERISA preemption challenge, and therefore, the increased prevalence of such programs would be indirectly attributable to the proposed rule. However, such an increase would be bounded by the eligibility restrictions for political subdivisions. If this issue were ultimately resolved in the courts, the courts could make a different preemption decision in the rule's presence than in its absence. Furthermore, even if a potential court decision would be the same with or without the rulemaking, the potential reduction in political subdivisions' uncertainty-related costs could induce more political subdivisions to pursue these workplace savings initiatives. An additional possibility is that the rule would not change the prevalence of political subdivision payroll deduction savings programs, but would accelerate the implementation of programs that would exist anyway. With any of these possibilities, there would be benefits, costs and transfer impacts that are indirectly attributable to this rule, via the increased or accelerated creation of political subdivision-level payroll deduction savings programs.

The possibility exists that the proposed rule could result in an acceleration or deceleration of payroll deduction programs at the state level depending on the circumstances. For example, if multiple cities in a state set up robust, successful payroll deduction savings programs, a state that might otherwise create its own program could conclude a state-wide program no longer is necessary. On the other hand, states could feel pressure to create a state-wide program if a city in the state does so in order to provide retirement income security for all of its citizens. However, problems could arise if the state and city programs overlap. Therefore, in Section III above, the Department solicits comments regarding whether the final regulation should clarify the status of a payroll deduction savings program of a qualified political subdivision when the state in which the subdivision is located establishes a state-wide retirement savings program after the qualified political subdivision establishes and operates its program. As discussed in the comment solicitation, the Department expects that in this circumstance, states would take into account the nature and existence of the qualified political subdivision's program and act in a measured and calculated way to ensure undesirable overlaps are eliminated.

Qualified political subdivisions that elect to establish payroll deduction savings programs pursuant to the safe harbor would incur administrative and operating costs, which can be substantial especially in the beginning years until the payroll deduction savings programs become self-sustaining. In addition, in order to avoid conflicts and confusion, qualified political subdivisions may incur costs to coordinate with other subdivisions, particularly those with overlapping boundaries.[35] However, these costs should offset compliance costs affected employers in the political subdivision would otherwise incur in the absence of communication and coordination.

The Department acknowledges the possibility that conflicting programs could be created in overlapping qualified political subdivisions when their programs are not coordinated in states without state-wide retirement savings program. Therefore, in order to obtain information that may help evaluate approaches to mitigate overlap across political subdivision, the Department solicits comments in Section III above regarding whether paragraph (h)(4)(iii) of the proposed rule should be expanded to, for example, preclude a city that is located within a county from being considered a qualified political subdivision if the county has established a county-wide payroll deduction savings program.

Employers may incur costs to update their payroll systems to transmit payroll deductions to the political subdivision or its agent, develop recordkeeping systems to document their collection and remittance of payments under the payroll deduction savings program, and provide information to employees regarding the political subdivision programs. As with political subdivisions' operational and administrative costs, some portion of these employer costs would be indirectly attributable to the rule if more political subdivision payroll deduction savings programs are implemented in the rule's presence than would be in its absence. Because the proposed rule narrows the number of political subdivisions that are eligible for the safe harbor rule, the aggregate costs imposed on employers would be limited. Moreover, in order to satisfy the safe harbor, most associated costs for employers would be nominal because the roles of employers are limited to ministerial functions such as withholding the required contribution from employees' wages, remitting contributions to the political subdivision program and providing information about the program to employees. However, these costs would be incurred disproportionately by small employers and start-up companies, which tend to be least likely to offer pensions. According to one survey, about 60% of small employers do not use a payroll service.[36] These small employers may incur additional costs to use external payroll companies to comply with their political subdivisions' programs. However, some small employers may decide to use a payroll service to withhold and remit payroll taxes independent of their political subdivisions' program requirement. Therefore, the extent to which these costs can be attributable to political subdivisions' programs could be smaller than what some might estimate. Moreover such costs could be mitigated if political subdivisions exempt the smallest companies from their payroll deduction savings programs as some states do. The Department welcomes comments regarding this assessment.

---

[35] For example, Harris County and City of Houston in Texas both would be eligible for the safe harbor and could create and operate their own savings programs. In this scenario, it would be ideal for the political subdivisions to coordinate and communicate with each other in developing and implementing savings programs to avoid conflicting rules and confusion for employers.

[36] National Small Business Association, April 11, 2013, "2013 Small Business Taxation Survey." This survey says 23% of small employers who handle payroll taxes internally have no employees. Therefore, only about 46%, not 60%, of small employers would be in fact affected by political subdivisions' payroll deduction savings programs, based on this survey. The survey does not include small employers that use payroll software or on-line payroll programs, which provide a cost effective means for such employers to comply with payroll deduction savings programs.

Employers, particularly those operating in multiple political subdivisions, may face potentially increased costs to comply with several political subdivision payroll deduction savings programs. This can be more challenging for employers if they operate in political subdivisions where not all subdivisions have their own payroll deduction savings programs and/or where some subdivisions' programs conflict with others. The Department acknowledges the heightened complexity caused by political subdivisions' payroll deduction savings programs and challenges faced by employers. However, the employers operating across several political subdivision borders may have ERISA-covered plans in place for their employees. Thus, there may be no cost burden associated with complying with multiple political subdivision payroll deduction savings programs because employers that sponsor plans might be exempt from those programs. Furthermore, in order to satisfy the proposed safe harbor rule, the role of employers would be limited to ministerial functions such as timely transmitting payroll deductions, which implies that the increase in cost burden is further likely to be restricted. By limiting the eligibility to political subdivisions in states without statewide retirement savings programs, this proposed rule addresses the concerns raised by several commenters about the possibility that a political subdivision's program may conflict with its state's retirement savings program.

The Department believes that well-designed political subdivision-level payroll deduction savings programs have the potential to effectively reduce gaps in retirement security. Relevant variables such as pension coverage, labor market conditions,[37] population demographics, and elderly poverty, vary widely across the political subdivisions, suggesting a potential opportunity for progress at the political subdivision level. Many workers throughout these political subdivisions currently may save less than would be optimal due to (1) behavioral biases (such as myopia or inertia), (2) labor market conditions that prevent them from accessing plans at work, or (3) their employers failure to offer retirement plans.[38] Some research suggests that automatic contribution policies are effective in increasing retirement savings and wealth in general by overcoming behavioral biases or inertia.[39] Well-designed political subdivisions' payroll deduction savings programs could help many savers who otherwise might not be saving enough or at all to begin to save earlier than they might have otherwise. Such workers will have traded some consumption today for more in retirement, potentially reaping net gains in overall lifetime well-being. Their additional savings may also reduce fiscal pressure on publicly financed retirement programs and other public assistance programs, such as the Supplemental Nutritional Assistance Program, that support low-income Americans, including older Americans.

The Department believes that well-designed political subdivision payroll deduction savings programs can achieve their intended, positive effects of fostering retirement security. However, the potential benefits—primarily increases in retirement savings—might be somewhat limited, because the proposed safe harbor does not allow employer contributions to political subdivisions' payroll deduction savings programs. Additionally, the initiatives might have some unintended consequences. Those workers least equipped to make good retirement savings decisions arguably stand to benefit most from these programs, but also arguably could be at greater risk of suffering adverse unintended effects. Workers who would not benefit from increased retirement savings could opt out, but some might fail to do so. Such workers might increase their savings too much, unduly sacrificing current economic needs. Consequently, they might be more likely to cash out early and suffer tax losses (unless they receive a non-taxable Roth IRA distribution), and/or to take on more expensive debt to pay necessary bills. Similarly, political subdivisions' payroll deduction savings programs directed at workers who do not currently participate in workplace savings arrangements may be imperfectly targeted to address gaps in retirement security. For example, some college students might be better advised to take less in student loans rather than open an IRA and some young families might do well to save more first for their children's education and later for their own retirement. In general, workers without retirement plan coverage tend to be younger, lower-income or less attached to the workforce, thus these workers may be financially stressed or have other savings goals. Because only large political subdivisions can create and implement programs under the proposed rule, these demographic characteristics can be more pronounced assuming large political subdivisions tend to have more diverse workforces.[40] If so, then the benefits of political subdivisions' payroll deduction savings programs could be further limited and in some cases potentially harmful for certain workers. Although these might be valid concerns, political subdivisions are responsible for designing effective programs that minimize these types of harm and maximize benefits to participants.

There is another concern that political subdivision initiatives may "crowd-out" ERISA-covered plans. The proposed rule may inadvertently encourage employers operating in multiple political subdivisions to switch from ERISA-covered plans to political subdivision payroll deduction savings programs in order to reduce costs especially if they are required to cover employees currently ineligible to participate in ERISA-covered plans under political subdivision programs. This proposed rule makes clear that political subdivision programs directed toward employers that do not offer other retirement plans fall within this proposed safe harbor rule. However, employers that wish to provide retirement benefits are likely to find that ERISA-covered programs, such as 401(k) plans, have advantages for them and their employees over participation in political subdivision programs. Potential advantages include significantly higher limits on tax-favored contributions, greater flexibility in plan selection and design, opportunity for employers to contribute, ERISA protections, and larger positive recruitment and retention effects. Therefore it seems unlikely that political subdivision initiatives will "crowd-out" many ERISA-covered plans, although, if they do, some workers might lose ERISA-protected benefits that could have been more generous and more secure than political subdivision-based (IRA) benefits if political subdivisions do not adopt consumer protections similar to those Congress provided under ERISA.

---

[37] *See, e.g.,* U.S. Bureau of Labor Statistics, "Metropolitan Area Employment and Unemployment—May 2016," USDL–16–1291 (June 29, 2016).

[38] According to the National Compensation Survey, March 2016, only 66% of private-sector workers have access to retirement benefits—including Defined Benefit and Defined Contribution plans—at work. According to the comment letter submitted by the Public Advocate for the City of New York, only 41 percent of individuals working in the private sector within the five boroughs of New York City have access to retirement savings plans at work.

[39] *See* Chetty, Friedman, Leth-Petresen, Nielsen & Olsen, "Active vs. Passive Decisions and Crowd-out in Retirement Savings Accounts: Evidence from Denmark," 129 Quarterly Journal of Economics 1141–1219 (2014). *See also* Madrian and Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," 116 Quarterly Journal of Economics 1149–1187 (2001).

[40] *See e.g.,* Comment Letter #57 (Public Advocate for the City of New York).

There is also the possibility that some workers who would otherwise have saved more might reduce their savings to the low, default levels associated with some political subdivision programs. Political subdivisions can address this concern by incorporating into their programs participant education or "auto-escalation" features that increase default contribution rates over time and/or as pay increases. There also is a concern that political subdivisions' programs would in general provide participants with less consumer protection than ERISA-covered plans. However, this concern can be addressed by political subdivisions designing their programs with sufficient participant protections.

D. Regulatory Alternatives

As discussed in Section II of this preamble, the Department was presented with and considered two divergent alternatives in determining which political subdivisions would be qualified to use the safe harbor.

Under the first and broadest alternative, the safe harbor could be made available to any political subdivision in the U.S. with the authority to require employers to participate in payroll deduction programs. According to U.S. Census Bureau data, tens of thousands of political subdivisions would qualify under this approach.[41] While this alternative potentially could result in providing access to payroll deduction savings programs to the most workers in a state, the Department did not adopt this alternative because it could cause administrative complexity for employers operating in a state (or states) with multiple political subdivisions due to overlapping programs of political subdivisions. Moreover, the vast majority of political subdivisions are relatively small in terms of population (83% have populations of less than 10,000 people), and the Department is sensitive to the issue of whether smaller political subdivisions have the ability, experience, and resources to oversee payroll deduction savings programs and safeguard employee contributions to such programs.[42]

By contrast, the narrower approach the Department considered and adopted in the proposal would reduce the number of potentially qualified political subdivisions by applying the criteria set forth in paragraphs (h)(4)(i) through(iii) of the proposal. This approach should reduce administrative burden and complexity on employers and protect workers by ensuring that payroll deduction savings programs would be established and operated by larger political subdivisions. The consequence of this approach may be that fewer employees will be automatically enrolled in payroll deduction savings programs of political subdivisions, but the Department found this to be the preferred alternative, because it balances two very important policy goals of advancing secure coverage and savings opportunities for workers whose employers do not offer workplace savings programs while reducing burdens on employers. Comments are solicited on this analysis.

E. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The Department has determined this proposed rule is not subject to the requirements of the PRA, because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3). The rule does not require any action by or impose any requirements on employers or the states. It merely clarifies that certain political subdivision payroll deduction savings programs that encourage retirement savings would not result in the creation of employee benefit plans covered by Title I of ERISA.

Moreover, the PRA definition of "burden" excludes time, effort, and financial resources necessary to comply with a collection of information that would be incurred by respondents in the normal course of their activities. *See* 5 CFR 1320.3(b)(2). The definition of "burden" also excludes burdens imposed by a state, local, or tribal government independent of a Federal requirement. *See* 5 CFR 1320.3(b)(3). The proposed rule imposes no burden on employers, because political subdivisions customarily include notice and recordkeeping requirements when enacting their payroll deduction savings programs. Thus, employers participating in such programs are responding to political subdivision, not Federal, requirements.

Although the Department has determined that the proposed rule does not contain a collection of information, when rules contain information collections the Department invites comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In addition to having an opportunity to file comments with the Department, comments may also be sent to the Office of Information and Regulatory Affairs,

---

[41] The U.S. Census Bureau's count for 2012 (the most recent data available). The U.S. Census Bureau produces data every 5 years as a part of the Census of Governments in years ending in "2" and "7." *See* U.S. Census Bureau, Government Organization Summary Report: 2012 Census of Governments (*http://www.census.gov/govs/cog/index.html*).

[42] U.S. Census Bureau, County Governments by Population-Size Group and State: 2012 Census of Governments; U.S. Census Bureau; Subcounty Governments by Population-Size Group and State: 2012 Census of Governments (*http://www.census.gov/govs/cog/index.html*).

Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

The proposed rule merely establishes a new safe harbor describing circumstances in which payroll deduction savings programs established and maintained by political subdivisions would not give rise to ERISA-covered employee pension benefit plans. Therefore, the proposed rule imposes no requirements or costs on small employers, and the Department believes that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to section 605(b) of the RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million as adjusted for inflation.

H. Congressional Review Act

The proposed rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The proposed rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign- based enterprises in domestic and export markets.

I. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. It also requires adherence to specific criteria by federal agencies in formulating and implementing policies that have "substantial direct effects" on the states, the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final regulation.

In the Department's view, the proposed regulations, by clarifying that certain workplace savings arrangements under consideration or adopted by certain political subdivisions will not result in creation of employee benefit plans under ERISA, would provide more latitude and certainty to political subdivisions and employers regarding the treatment of such arrangements under ERISA. The Department will affirmatively engage in outreach with officials of states, political subdivisions, and with employers and other stakeholders, regarding the proposed rule and seek their input on the proposed rule and any federalism implications that they believe may be presented by it.

List of Subjects in 29 CFR Part 2510

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting, Coverage.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2510 as set forth below:

PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 237 (2012), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

■ 2. Revise § 2510.3–2(h) to read as follows:

§ 2510.3–2 Employee pension benefit plan.

* * * * *

(h) *Certain governmental payroll deduction savings programs.* (1) For purposes of title I of the Act and this chapter, the terms "employee pension benefit plan" and "pension plan" shall not include an individual retirement plan (as defined in 26 U.S.C. 7701(a)(37)) established and maintained pursuant to a payroll deduction savings program of a State or qualified political subdivision of a State, provided that:

(i) The program is specifically established pursuant to State or qualified political subdivision law;

(ii) The program is implemented and administered by the State or qualified political subdivision establishing the program (or by a governmental agency or instrumentality of either), which is responsible for investing the employee savings or for selecting investment alternatives for employees to choose;

(iii) The State or qualified political subdivision (or governmental agency or instrumentality of either) assumes responsibility for the security of payroll deductions and employee savings;

(iv) The State or qualified political subdivision (or governmental agency or instrumentality of either) adopts measures to ensure that employees are notified of their rights under the program, and creates a mechanism for enforcement of those rights;

(v) Participation in the program is voluntary for employees;

(vi) All rights of the employee, former employee, or beneficiary under the program are enforceable only by the employee, former employee, or beneficiary, an authorized representative of such a person, or by the State or qualified political subdivision (or governmental agency or instrumentality of either);

(vii) The involvement of the employer is limited to the following:

(A) Collecting employee contributions through payroll deductions and remitting them to the program;

(B) Providing notice to the employees and maintaining records regarding the employer's collection and remittance of payments under the program;

(C) Providing information to the State or qualified political subdivision (or governmental agency or instrumentality of either) necessary to facilitate the operation of the program; and

(D) Distributing program information to employees from the State or qualified political subdivision (or governmental agency or instrumentality of either) and permitting the State or qualified political subdivision (or governmental agency or instrumentality of either) to publicize the program to employees;

(viii) The employer contributes no funds to the program and provides no bonus or other monetary incentive to employees to participate in the program;

(ix) The employer's participation in the program is required by State or qualified political subdivision law;

(x) The employer has no discretionary authority, control, or responsibility under the program; and

(xi) The employer receives no direct or indirect consideration in the form of cash or otherwise, other than consideration (including tax incentives and credits) received directly from the State or qualified political subdivision (or governmental agency or instrumentality of either) that does not exceed an amount that reasonably approximates the employer's (or a typical employer's) costs under the program.

(2) A payroll deduction savings program will not fail to satisfy the provisions of paragraph (h)(1) of this section merely because the program—

(i) Is directed toward those employers that do not offer some other workplace savings arrangement;

(ii) Utilizes one or more service or investment providers to operate and administer the program, provided that the State or qualified political subdivision (or the governmental agency or instrumentality of either) retains full responsibility for the operation and administration of the program; or

(iii) Treats employees as having automatically elected payroll deductions in an amount or percentage of compensation, including any automatic increases in such amount or percentage, unless the employee specifically elects not to have such deductions made (or specifically elects to have the deductions made in a different amount or percentage of compensation allowed by the program), provided that the employee is given adequate advance notice of the right to make such elections, and provided, further, that a program may also satisfy this paragraph (h) without requiring or otherwise providing for automatic elections such as those described in this paragraph (h)(2)(iii).

(3) For purposes of this section, the term "State" shall have the same meaning as defined in section 3(10) of the Act.

(4) For purposes of this section, the term "qualified political subdivision" means any governmental unit of a State, including a city, county, or similar governmental body, that–

(i) Has the authority, implicit or explicit, under State law to require employers' participation in the program as described in paragraph (h)(1)(ix) of this section;

(ii) Has a population equal to or greater than the population of the least populated State (excluding the District of Columbia and territories listed in section 3(10) of the Act); and

(iii) Is not located in a State that pursuant to State law establishes a statewide retirement savings program for private-sector employees.

Signed at Washington, DC, this 24th day of August, 2016.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–20638 Filed 8–25–16; 4:15 pm]

BILLING CODE 4510–29–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–12; Order No. 3482]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to an analytical method for use in periodic reporting (Proposal Four). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 7, 2016. *Reply Comments are due:* October 21, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Proposal Four
III. Notice and Comment
IV. Ordering Paragraphs

I. Introduction

On August 22, 2016, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes to an analytical method for use in periodic reporting.[1] The Petition identifies the proposed analytical method changes filed in this docket as Proposal Four.

II. Proposal Four

Proposal Four concerns the treatment of purchased highway transportation costs within the Cost and Revenue Analysis report. The objective of the proposal is to improve the methodology for calculating attributable purchased highway costs by incorporating the variability of purchased highway transportation capacity with respect to volume into the calculation of attributable costs for purchased highway transportation. Petition at 2. In support of its Petition, the Postal Service has attached a report: "Research on Estimating the Variability of Purchased Highway Transportation Capacity with Respect to Volume" by Michael D. Bradley, Department of Economics, George Washington University.

III. Notice and Comment

The Commission establishes Docket No. RM2016–12 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Four no later than October 7, 2016. Reply comments are due no later than October 21, 2016. Pursuant to 39 U.S.C. 505, Lawrence Fenster is designated as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

---

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), August 22, 2016 (Petition).

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–12 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), filed August 22, 2016.

2. Comments by interested persons in this proceeding are due no later than October 7, 2016. Reply comments are due no later than October 21, 2016.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lawrence Fenster to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–20822 Filed 8–29–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–10; Order No. 3484]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reporting (Proposal Two). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 11, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Summary of Proposal
III. Notice and Comment
IV. Ordering Paragraphs

I. Introduction

On August 22, 2016, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to the Postal Service's periodic reports.[1] Proposal Two is attached to the Petition and proposes an analytical method change relating to the treatment of carrier costs within the International Cost and Revenue Analysis (ICRA) report. Petition at 1.

II. Summary of Proposal

Under Proposal Two, the Postal Service seeks to revise the method for distributing city carrier street and rural carrier costs to products in the ICRA report. Petition, Proposal Two at 1. Specifically, the Postal Service proposes to "align the ICRA methodology with the Cost and Revenue Analysis (CRA) methodology used for developing delivery costs." *Id.* The Postal Service recommends synchronization of the methods for three elements of the city carrier street model (letter routes, special purpose routes, and support and other costs) and for one element of the rural carrier model. *Id.* The Postal Service asserts that this proposed change would result in improved accuracy of international cost estimates. *Id.* at 7.

III. Notice and Comment

The Commission establishes Docket No. RM2016–10 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Two no later than October 11, 2016. Pursuant to 39 U.S.C. 505, Lawrence Fenster is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–10 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), filed August 22, 2016.

2. Comments are due no later than October 11, 2016.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lawrence Fenster to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–20823 Filed 8–29–16; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0096; FRL–9951–47–Region 9]

Air Plan Approval; Reno, Nevada; Second 10-Year Carbon Monoxide Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Nevada ("State"). On July 3, 2008, the EPA redesignated the Truckee Meadows area, consisting largely of the cities of Reno and Sparks in Washoe County, Nevada, from nonattainment to attainment for the carbon monoxide National Ambient Air Quality Standards (NAAQS) and approved the State's plan addressing the area's maintenance of the NAAQS for ten years. On November 7, 2014, the State submitted to the EPA a second maintenance plan for the Truckee Meadows area that addressed maintenance of the NAAQS through 2030. The EPA is also proposing to find adequate and approve transportation conformity motor vehicle emissions budgets for the years 2015, 2020, 2025 and 2030. We are making this proposal under the Clean Air Act.

DATES: Any comments on this proposal must arrive by September 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0096 at *http://www.regulations.gov,* or via email to John Kelly, Air Planning Office, at *kelly.johnj@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

---

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Two), August 22, 2016 (Petition).

FOR FURTHER INFORMATION CONTACT: John Kelly, EPA Region IX, (415) 947–4151, *kelly.johnj@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA. This proposal addresses the following local plan, "Second 10-Year Maintenance Plan for the Truckee Meadows 8-Hour Carbon Monoxide Attainment Area, August 28, 2014," and associated motor vehicle emissions budgets. In the Rules and Regulations section of this **Federal Register**, we are approving this local plan in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 15, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–20655 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2015–0674; FRL–9951–50–Region 3]

Maryland: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Maryland has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Maryland. In the Rules and Regulations section of this **Federal Register**, EPA is authorizing the revisions by a direct final rule. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposal.

DATES: Send your written comments by September 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2015–0674, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *Email: pratt.stacie@epa.gov*.
3. *Mail:* Stacie Pratt, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

For further information on how to submit comments, please see today's direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stacie Pratt, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–5173; email address: *pratt.stacie@epa.gov*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of the **Federal Register**, EPA is authorizing the revisions by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the direct final rule. Unless EPA receives adverse written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, we will withdraw the Direct Final Rule, and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposal and after consideration of all comments. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, EPA Region III.

[FR Doc. 2016–20842 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 215, 219, and 235

[Docket DARS–2016–0030]

RIN 0750–AJ03

Defense Federal Acquisition Regulation Supplement: Pilot Program for Streamlining Awards for Innovative Technology Projects (DFARS Case 2016–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 that provides exceptions from the certified cost and pricing data requirements and from the records examination requirement for certain awards to small businesses or nontraditional defense contractors.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 31, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016–D016, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2016–D016" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2016–D016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2016–D016" on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2016–D016 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer D. Johnson, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS to implement section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 873 provides an exception from certified cost and pricing data requirements for contracts, subcontracts, or modifications of contracts or subcontracts valued at less than $7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (*e.g.,* broad agency announcement) or the Small Business Innovation Research (SBIR) Program. Section 873 provides authority to determine that submission of cost and pricing data should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award. Section 873 also provides an exception from the records examination requirement at 10 U.S.C. 2313 for contracts valued at less than $7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (*e.g.,* broad agency announcement) or the SBIR Program. Section 873 provides authority to determine that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award. These exceptions end on October 1, 2020.

II. Discussion and Analysis

This rule proposes amendments to DFARS subpart 215.4, subpart 219.2, and part 235 as summarized in the following paragraphs:

A. Subpart 215.4, Contract Pricing.

- 215.401, Definitions. This section is added to provide a definition of "nontraditional defense contractor," consistent with section 873 of the NDAA for FY 2016.
- 215.403–1, Prohibition on Obtaining Certified cost or Pricing Data. This section is amended to add text implementing the exception in section 873 from certified cost or pricing data requirements.
- 215.404–2, Data to Support Proposal Analysis. This section is amended to add text implementing the exception in section 873 from the records examination requirement.

B. Subpart 219.2, Policies. At section 219.202, Specific Policies, introductory text is added to provide a cross reference to refer contracting officers to the new text in DFARS 215.403–1 and 215.404–2.

C. Part 235, Research and Development Contracting. Section 235.016, Broad Agency Announcement, is added to refer contracting officers to the new text in subpart 215.4.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92). Section 873 provides an exception from certified cost and pricing data requirements for contracts, subcontracts, or modifications of contracts or subcontracts valued at less than $7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (*e.g.,* broad agency announcement) or the Small Business Innovation Research Program. Section 873 provides authority to determine that submission of cost and pricing data should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award. Section 873 also provides an exception from the records examination requirement at 10 U.S.C. 2313 for contracts valued at less than $7.5 million awarded to a small business or nontraditional defense contractor pursuant to a technical, merit-based selection procedure (*e.g.,* broad agency announcement) or the Small Business Innovation Research Program. Section 873 provides authority to determine that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor or analysis of other information specific to the award. These exceptions end on October 1, 2020.

The objectives of this rule are to implement statutory exceptions from certified cost and pricing data requirements and from the records examination requirement, thereby streamlining awards for innovative technology projects to small businesses and nontraditional defense contractors. The legal basis for the rule is section 873 of the NDAA for FY 2016.

The rule will apply to small entities who receive awards pursuant to a broad agency announcement or the Small Business Innovation Research Program. DoD has awarded such contracts valued at less than $7.5 million to approximately 1,120 unique small entities per year during the last three years.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2016–D016), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 215, 219, and 235

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 215, 219, and 235 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 215, 219, and 235 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Add section 215.401 to read as follows:

215.401 Definitions.

Nontraditional defense contractor, as used in this subpart, means an entity that is not currently performing and has not performed any contract or subcontract for DoD that is subject to full coverage under the cost accounting standards prescribed pursuant to 41 U.S.C. 1502 and the regulations implementing such section, for at least the 1-year period preceding the solicitation of sources by DoD for the procurement (10 U.S.C. 2302(9)).

■ 3. Revise section 215.403–1(b) to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(b) *Exceptions to certified cost or pricing data requirements.* (i) Follow the procedures at PGI 215.403–1(b).

(ii)(A) Until October 1, 2020, except as provided in paragraph (b)(ii)(B) of this section, the requirement to submit certified cost or pricing data shall not apply to contracts, subcontracts, or modifications of contracts or subcontracts valued at less than $7.5 million awarded to a small business concern or nontraditional defense contractor pursuant to—

(*1*) A broad agency announcement containing technical, merit-based selection criteria (see FAR 35.016(b)(2)); or

(*2*) The Small Business Innovation Research Program.

(B) Notwithstanding the exception in paragraph (b)(ii)(A) of this section, the head of the contracting activity may determine that submission of certified cost or pricing data should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

* * * * *

■ 4. Revise section 215.404–2 to read as follows:

215.404–2 Data to support proposal analysis.

(a)(i) Until October 1, 2020, except as provided in paragraph (a)(ii) of this section, the requirement for records examination under 10 U.S.C. 2313(b) shall not apply to a contract valued at less than $7.5 million awarded to a small business concern or nontraditional defense contractor pursuant to—

(A) A broad agency announcement containing technical, merit-based selection criteria (see FAR 35.016(b)(2)); or

(B) The Small Business Innovation Research Program.

(ii) Notwithstanding the exception in paragraph (a)(i) of this section, the head of the contracting activity may determine that auditing of records should be required based on past performance of the specific small business or nontraditional defense contractor, or based on analysis of other information specific to the award.

(b) See PGI 215.404–2 for guidance on obtaining field pricing or audit assistance.

PART 219—SMALL BUSINESS PROGRAMS

■ 5. Revise section 219.202 to read as follows:

219.202 Specific policies.

See 215.403–1 and 215.404–2 when contemplating award of a contract, subcontract, or modification to a small business or nontraditional defense contractor, as defined in subpart 215.4.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 6. Add section 235.016 to read as follows:

235.016 Broad agency announcement.

See 215.403–1 and 215.404–2 when contemplating award of a contract, subcontract, or modification to a small business or nontraditional defense contractor, as defined in subpart 215.4.

[FR Doc. 2016–20477 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 81, No. 168
Tuesday, August 30, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee (RAC) will meet in Ketchikan, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *https://www.fs.usda.gov/main/pts.*

DATES: The meeting will be held on September 21, 2016, at 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. A conference line is set up for those who would like to listen in by telephone. For the conference call number, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ketchikan Misty Fiords Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Diane L. Olson, RAC Coordinator, by phone at 907–228–4105 or via email at *dianelolsongfs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update members on past RAC projects, and
2. Propose new RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 16, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Diane L. Olson, RAC Coordinator, Ketchikan Misty Fiords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska 99901; by email to *dianelolsongfsled.us,* or via facsimile to 907–225–8738.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 18, 2016.

Daryl Bingham,

Acting District Ranger.

[FR Doc. 2016–20385 Filed 8–29–16; 8:45 am]

BILLING CODE 3411–15–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection Under the Clear Title Program

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Grain Inspection, Packers and Stockyards Administration's (GIPSA) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection in support of the reporting and recordkeeping requirements under the "Clear Title" regulations as authorized by Section 1324 of the Food Security Act of 1985, as amended (Act). This approval is required under the Paperwork Reduction Act of 1995 (PRA).

DATES: We will consider comments that we receive by October 31, 2016.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hardcopy:* Mail, hand deliver, or courier to Dexter Thomas, GIPSA, USDA, 1400 Independence Avenue SW., Room 2530–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.

Instructions: All comments should refer the date and page number of this issue of the **Federal Register**. The comments and other documents relating to this action will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Catherine M. Grasso, Program Analyst, Litigation and Economic Analysis Division at (202) 720–7201, or *Catherine.M.Grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA administers the Clear Title Program under the Act (7 U.S.C. 1631) for the Secretary of Agriculture (Secretary). Regulations implementing the Clear

Title Program require that states implementing a central filing system for notification of liens on farm products have such systems certified by the Secretary. These regulations are contained in 9 CFR 205, "Clear Title—Protection for Purchasers of Farm Products." Nineteen states have certified central filing systems currently.

Title: "Clear Title" Regulations to implement section 1324 of the Food Security Act of 1985.

OMB Number: 0580–0016.

Expiration Date of Approval: July 31, 2017.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information is needed to carry out the Secretary's responsibility for certifying a state's central filing system under section 1324 of the Act. Section 1324 of the Act enables states to establish central filing systems to notify potential buyers, commission merchants, and selling agents of security interests (liens) against farm products. The Secretary has delegated authority to GIPSA for certifying these systems. Currently, 19 states have certified central filing systems. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to be 5 to 40 hours per response (amendments to certified systems require less time, new certifications require more time).

Respondents (Affected Public): States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

Estimated Number of Respondents: Less than 1 per year. However, since the enactment of the Food Conservation and Energy Act of 2008, otherwise known as the 2008 Farm Bill, which amended the Act to allow states to maintain master debtor lists with social security numbers or taxpayer identification numbers that are encrypted for security purposes, we have had 3 requests for amendments.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5–40 hours.

As required by the PRA (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), GIPSA specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–20730 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Belmond, IA; Minnesota; New Jersey; and New York Areas; Request for Comments on the Official Agency Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designation of the official agency listed below will end on September 30, 2016. We are asking persons or governmental agencies interested in providing official services in the areas presently served by this agency to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agency: D.R. Schaal Agency, Inc. (Schaal).

DATES: Applications and comments must be received by September 29, 2016.

ADDRESSES: Submit applications and comments concerning this Notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISonline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to *Regulations.gov* (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Sharon Lathrop, Compliance Officer, USDA, GIPSA, FGIS, QACD, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Sharon Lathrop, 816–872–1257.
- *Email: FGIS.QACD@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Sharon Lathrop, 816–891–0415 or *FGIS.QACD@usda.gov*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Schaal

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the States of Iowa, Minnesota, New Jersey, and New York, is assigned to this official agency.

In Iowa

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S.

Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

In Minnesota

Faribault, Freeborn, and Mower Counties.

In New Jersey

The entire State, except those export port locations within the State, which are serviced by GIPSA.

In New York

The entire State, except those export port locations within the State, which are serviced by GIPSA.

The following grain elevators are not part of this geographic area assignment and are assigned to: Sioux City Inspection and Weighing Service Company: Agvantage F.S., Chapin, Franklin County, Iowa; Five Star Coop, Rockwell, Cerro Gordo County, Iowa; Maxyield Coop, Algona, Kossuth County, Iowa; Stateline Coop, Burt, Kossuth County, Iowa; Gold-Eagle, Goldfield, Wright County, Iowa; and North Central Coop, Holmes, Wright County, Iowa.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas in the States of Iowa, Minnesota, New Jersey, and New York is for the period beginning October 1, 2016, to September 30, 2021. To apply for designation or to request more information, contact Sharon Lathrop at the address listed above.

Request for Comments

We are publishing this Notice to provide interested persons the opportunity to comment on the quality of services provided by the Schaal official agency. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicant. Submit all comments to Sharon Lathrop at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–20748 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utility Service

Submission for OMB Review; Comment Request

August 24, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 29, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance telecommunications, electric, and water and waste facilities in rural areas with a loan portfolio that totals nearly $58 billion. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et. seq.* as amended, (RE Act). Section 201 of the RE Act authorizes the Administrator to make loans to qualified telephone companies for the purpose of providing telephone service to the widest practicable number of rural subscribers.

Need and Use of the Information: RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 18.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,687.

Rural Utilities Service

Title: RUS Form 444, "Wholesale Power Contracts."

OMB Control Number: 0572–0089.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act) as amended (7 U.S.C. 901 *et seq.*), authorizes the Rural Utilities Service (RUS) to make and guarantee loans in the States and Territories of the United States that will enable rural consumers to obtain electric power. Rural consumers formed non-profit electric distribution cooperatives, groups of these distribution cooperatives banded together to form Generation and Transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems. All RUS and G&T borrowers will enter into a Wholesale Power Contract with their distribution members by using RUS Form 444, as adapted to meet the needs of the borrower.

Need and Use of the Information: To fulfill the purposes of the RE Act RUS will collect information to improve the credit quality and credit worthiness of loans and loan guarantees to G&T borrowers. RUS works closely with lending institutions that provide supplemental loan funds to borrowers. If the information were not collected, RUS could not determine whether Federal security interest would be adequately protected.

Description of Respondents: Not-for profit institutions; Business or other for-profit.

Number of Respondents: 13.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Rural Utilities Service

Title: 7 CFR 1703, Subparts D, E, F, and G, Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the Department of Agriculture and is authorized by Chapter 1 of subtitle D of the Food, Agriculture, Conservation and Trade Act of 1990. The purpose of the Distance Learning and Telemedicine Loan and Grant Program is to improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals and rural residents. Section 6201 of Title VI of the 2014 Farm Bill (Pub. L. 113–79) amended 7 U.S.C. 950aaa *et seq,* by extending the term of the program to the year 2018.

Need and Use of the Information: The various forms and narrative statements required are collected from eligible applicants that are public and private, for-profit and not-for-profit rural community facilities, schools, libraries, hospitals, and medical facilities. The purpose of this information is to determine such factors as: Eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and compliance with the applicable laws and regulations.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 190.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 11,031.

Rural Utilities Service

Title: Special Evaluation Assistance for Rural Communities and Households Program (SEARCH).

OMB Control Number: 0572–0146.

Summary of Collection: The Food, Conservation and Energy Act of 2008, Public Law 110–234 (Farm Bill) amended Section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients use the grant funds for feasibility studies, design assistance, and technical assistance for direct loans, grants and guaranteed loans, to financially distress communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in Sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT.

Need and Use of the Information: Applicants applying for SEARCH grants must submit an application which includes an application form, various other forms, certifications, and supplemental information. Rural Utility Service will use the information collected from applicants, borrowers, and consultants to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements.

Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the SEARCH program.

Description of Respondents: Not-for-profit Institutions and State, Local or Tribal Government.

Number of Respondents: 125.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,688.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–20725 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee for a Meeting To Discuss Approval of a Draft Committee Report Regarding Civil Rights and Civil Asset Forfeiture in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting on Monday, October 03, 2016, at 11 EDT for the purpose of discussing a draft report, including findings and recommendations to the Commission, regarding civil asset forfeiture practices in the state.

DATES: The meeting will be held on Monday, October 03, 2016, at 11 a.m. EDT.

Public Call Information: Dial: 877–852–6579, Conference ID: 8659596.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 877–852–6579, conference ID: 8659596. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office by COB Thursday September 29. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Michigan Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=255*). Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion of Committee Report: Civil Rights and Civil Asset Forfeiture in Michigan
Public Comment
Future Plans and Actions
Adjournment

Dated: August 25, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–20859 Filed 8–29–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee To Plan Civil Rights Project

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on: Friday, September 16, 2016; Friday, October 21, 2016; Friday, November 18, 2016; Friday, December 16, 2016; Friday, January 20, 2017; Friday, February, 17, 2017. The purpose of each planning meeting is to discuss project planning and eventually select topic(s) for the Committee's future civil rights review.

Public Call-In Information: Conference call-in number: 1–877–741–4251 and conference call ID: 4578233.

TDD: Dial Federal Relay Service at 1–800–977–8339 and give the operator the above toll-free conference call-in number and conference call ID.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–741–4251 and conference call ID: 4578233. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–741–4251 and conference call ID: 4578233.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

1. Opening
   - Rollcall
2. Planning Meeting
   - Discuss Project Planning
3. Other Business
4. Open Comment
5. Adjournment

Dated: August 25, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–20860 Filed 8–29–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Vermont Advisory Committee To Plan Civil Rights Project

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the Vermont Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on: Tuesday, September 27, 2016; Tuesday, October 25, 2016; Tuesday, November 22, 2016; Tuesday, December 27, 2016; Tuesday, January 24, 2017; Tuesday, February 28, 2017. The purpose of each planning meeting is to discuss project planning and eventually select topic(s) for the Committee's future civil rights review.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533. Public call-in information: Conference call-in number: 1–888–505–4377 and conference call ID: 2597273.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–505–4377 and conference call ID: 2597273. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over landline connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–505–4377 and conference call ID: 2597273.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=278;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

1. Opening
   - Rollcall
2. Planning Meeting
   - Discuss Project Planning
3. Other Business
4. Open Comment
5. Adjournment

Dated: August 25, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–20861 Filed 8–29–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Connecticut Advisory Committee To Plan Civil Rights Project

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the Connecticut Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (ET) on: Wednesday, September 14, 2016; Wednesday, October 12, 2016; Wednesday, November 9, 2016; Wednesday, December 14, 2016; Wednesday, January 11, 2017; Wednesday, February 8, 2017. The purpose of each planning meeting is to discuss project planning and eventually select topic(s) for the Committee's future civil rights review.

Public Call-In Information: Conference call-in number: 1–888–401–4675 and conference call ID: 2318907.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–888–401–4675 and conference call ID: 2318907. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over landline connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–888–401–4675 and conference call ID: 2318907.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=239;* click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone numbers, email or street address.

Agenda

1. Opening
   - Rollcall
2. Planning Meeting
   - Discuss Project Planning
3. Other Business
4. Open Comment
5. Adjournment

Dated: August 25, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–20862 Filed 8–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–81–2016]

Approval of Subzone Status; Givaudan Flavors Corporation; East Hanover, New Jersey

On June 3, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the State of New Jersey, Department of State, grantee of FTZ 44, requesting subzone status subject to the existing activation limit of FTZ 44, on behalf of Givaudan Flavors Corporation in East Hanover, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 25374–25375, 04–28–2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 44H is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 44's 407.5-acre activation limit.

Dated: August 24, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–20840 Filed 8–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–26–2016]

Foreign-Trade Zone (FTZ) 76—Bridgeport, Connecticut; Authorization of Production Activity; ASML US, Inc. (Optical, Metrology, and Lithography System Modules); Newtown and Wilton, Connecticut

On April 26, 2016, ASML US, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facilities within Subzone 76A, in Newtown and Wilton, Connecticut.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 27085–27086, May 5, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: August 24, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–20843 Filed 8–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–28–2016]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Authorization of Production Activity; Eastman Kodak Company; Subzone 26N (Aluminum Printing Plates); Columbus, Georgia

On April 26, 2016, Georgia Foreign Trade Zone, Inc., grantee of FTZ 26, submitted a notification of proposed production activity to the FTZ Board on behalf of Eastman Kodak Company, within Subzone 26N in Columbus, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 28051, May 9, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: August 24, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–20841 Filed 8–29–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 2, 2016, the United States Court of International Trade (the CIT) sustained the Department of Commerce (the Department)'s final results of redetermination concerning the less-than-fair-value (LTFV) investigation of certain oil country tubular goods (OCTG) from the Republic of Korea. The Department is notifying the public that the CIT's final judgment in this case is not in harmony with the Department's final determination in the LTFV investigation, and that the Department is amending the weighted-average dumping margins from the final determination.

DATES: *Effective:* August 12, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Victoria Cho, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2014, the Department published the *Final Determination* in the LTFV investigation of OCTG from the Republic of Korea.[1] Subsequently, various interested parties timely filed complaints with the CIT to challenge certain aspects of the Department's *Final Determination.* On September 2, 2015, the CIT issued its *Remand Order,* directing the Department to reconsider certain aspects of the constructed value (CV) profit rate calculation used in the dumping margin analysis. Specifically, the Court instructed the Department to: (1) Either remove the financial statements of Tenaris, S.A. (Tenaris) from the record and not use them in the CV profit calculation, or, alternatively, rectify the alleged prejudice from acceptance of such statements; (2) either exclude from consideration or, alternatively, explain the relevance of market conditions and testing and certification requirements to the determination of which products are in the same general category of merchandise as OCTG; and, (3) either calculate and apply a profit cap or, alternatively, explain why the data on the record cannot be used to calculate a "facts available" profit cap under 19 U.S.C. 1677b(e)(2)(B)(iii). In addition, the CIT found that the Department did not provide sufficient reasoning for declining to select ILJIN Steel Corporation (ILJIN) as a mandatory respondent, and thus ordered the Department to reconsider the issue of whether the two selected respondents (Hyundai Steel Company (HYSCO) and NEXTEEL Co. Ltd. (NEXTEEL)), which produce only welded OCTG, were representative of the Korean industry. As part of this remand, the Court directed the Department to consider information on the record that is probative of the difference between welded and seamless OCTG, including costs and pricing.[2]

After the CIT issued its *Remand Order,* the Department re-opened the record to allow all interested parties to submit new factual information and comment on the issue of CV profit (including the application of the profit cap) in the event the Department relied upon the alternative CV profit methodology provided for under 19 U.S.C. 1677b(e)(2)(B)(iii). On February 22, 2016, the Department issued its *Final Redetermination,* in which it provided further explanation of which products are in the same general category of merchandise as OCTG and why the revised calculated CV profit rate in the *Final Redetermination* is also appropriately applied as the profit cap based upon the available facts. The Department also revised the CV profit rate calculation, basing it on the average of the profit rates in the 2012 financial statements of Tenaris and OAO TMK, a Russian producer/exporter of OCTG. As a result, the weighted-average dumping margins changed for HYSCO, NEXTEEL, and all other Korean exporters and producers. In the *Final Redetermination,* the Department also explained the basis for exercising its discretion to select mandatory respondents using the largest volume method, including the requisite analysis of record evidence, and therefore why it was appropriate not to select ILJIN as a mandatory respondent in the underlying investigation.[3] On August 2, 2016, the CIT upheld the Department's *Final Redetermination* in full.[4]

---

[1] *See Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances,* 79 FR 41983 (July 18, 2014) (*Final Determination*).

[2] *See Husteel Co., Ltd., et al.,* v. *United States,* Consol. Court No. 14–00215, Slip. Op. 15–100 (Ct. Int'l Trade Sept. 2, 2015) (*Remand Order*).

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the United States Court of Appeals for the Federal Circuit has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's August 2, 2016 judgment sustaining the *Final Redetermination* constitutes a final decision of that court which is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirement of *Timken.*

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to the weighted-average dumping margins for NEXTEEL, HYSCO, and all other Korean exporters and producers for the period July 1, 2012 through June 30, 2013, effective August 12, 2016. The revised weighted-average dumping margins are as follows:

Exporter or producer	Weighted-average dumping margin (percent)
Hyundai HYSCO[7]	6.49
NEXTEEL Co. Ltd.	3.98
All-Others	5.24

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Cash Deposit Requirements

Since the *Final Determination,* the Department has not established a new cash deposit rate for HYSCO, NEXTEEL, or all other Korean exporters and producers. As a result, in accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection to collect cash deposits at the rates for entries of subject merchandise in accordance with the rates for exporters and producers listed above in this notice, effective August 12, 2016.

This notice is issued and published in accordance with sections 516(A)(e), 735(d), and 777(i)(1) of the Act.

Dated: August 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement & Compliance.

[FR Doc. 2016–20839 Filed 8–29–16; 8:45 am]

BILLING CODE 3510–DS–P

---

[3] *See Final Redetermination Pursuant to Court Remand* in *Husteel Co., Ltd., et al.,* v. *United States,* Consol. Court No. 14–00215, dated February 22, 2016 (*Final Redetermination*). The *Final Redetermination* is accessible at *http://enforcement.trade.gov/remands/15-100.pdf.*

[4] *See Husteel Co., Ltd., et al.,* v. *United States,* Consol. Court No. 14–00215, Slip. Op. 16–76 (Ct. Int'l Trade Aug. 2, 2016).

[5] *See Timken Co., v United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[6] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[7] On July 18, 2016, the Department published the notice of initiation and expedited preliminary results of a changed circumstances review in which it preliminarily determined that Hyundai Steel Co. Ltd. is the successor-in-interest to Hyundai HYSCO. *See Certain Oil Country Tubular Goods From the Republic of Korea: Initiation and Expedited Preliminary Results of Changed Circumstances Review,* 81 FR 46645 (July 18, 2016). If the Department upholds these preliminary results in its final results, Hyundai Steel Co. Ltd. will be entitled to the antidumping duty deposit rate currently assigned to Hyundai HYSCO with respect to the subject merchandise.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Thursday September 15, 2016, from 8:00 a.m. to 3:30 p.m. Eastern Time.

DATES: The meeting will be held Thursday, September 15, 2016, from 8:00 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the Detroit Marriott at the Renaissance Center, 400 Renaissance Dr. W., Detroit, Michigan 48243. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION, CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–2785, email: *Cheryl.Gendron@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board (Board) is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69); codified at 15 U.S.C. 278k(e), as amended, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings MEP Program is a unique program, consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board provides the Hollings MEP advice and assessments on programs, plans, and policies focused on supporting and growing the U.S. manufacturing industry, provides advice on MEP programs, plans, and policies, assesses the soundness of MEP plans and strategies, and assesses current performance against MEP program plans.

Background information on the Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Thursday, September 15, 2016, from 8:00 a.m. to 3:30 p.m. Eastern Time. This meeting will focus on several topics. The Board will receive an update on NIST MEP programmatic operations, as well as provide guidance and advice to MEP senior management on the drafting of the 2017–2022 Strategic Plan. The Board will also provide input to MEP on developing protocols that will connect user facilities, research, and technologies at NIST and other federal laboratories with the help of the MEP network to support small and mid-size manufacturers, and make recommendations on the establishment of an MEP Learning Organization. This encompasses an effort to strengthen connections by sharing best practices and building Working Groups and Communities of Practice for furtherance of the Hollings MEP Program's mission. The final agenda will be posted on the MEP Advisory Board Web site at *http://www.nist.gov/mep/about/advisory-board.cfm*. This is meeting is being held in conjunction with the MEP Update Meeting that will be held September 14, 2016 also at the Detroit Marriott at the Renaissance Center.

Admittance Instructions: Anyone wishing to attend the MEP Advisory Board meeting should submit their name, email address and phone number to Cheryl Gendron (*Cheryl.Gendron@nist.gov* or 301–975–2785) no later than Tuesday, September 6, 2016, 5:00 p.m. Eastern Time.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board Web site at *http://www.nist.gov/mep/about/advisory-board.cfm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, via fax at (301) 963–6556, or electronically by email to *Cheryl.Gendron@nist.gov*.

Kevin A. Kimball,
Chief of Staff.

[FR Doc. 2016–20746 Filed 8–29–16; 8:45 am]

BILLING CODE 3510–13–P

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Council of the Inspectors General on Integrity and Efficiency.

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Performance Review Board as of October 1, 2016.

DATES: *Effective Date:* October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Individual Offices of Inspectors General at the telephone numbers listed below.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General Act of 1978, as amended, created the Offices of Inspectors General as independent and objective units to conduct and supervise audits and investigations relating to Federal programs and operations. The Inspector General Reform Act of 2008, established the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. The CIGIE is an interagency council whose executive chair is the Deputy Director for Management, Office of Management and Budget, and is comprised principally of the 73 Inspectors General (IGs).

II. CIGIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the Council of the Inspectors General on Integrity and Efficiency Performance Review Board, as of October 1, 2016, are as follows:

Agency for International Development

Phone Number: (202) 712–1150

CIGIE Liaison—Justin Brown (202) 712–1150

Daniel Altman—Assistant Inspector General for Investigations.

Lisa McClennon—Deputy Assistant Inspector General for Investigations.

Thomas Yatsco—Assistant Inspector General for Audit.

Melinda Dempsey—Deputy Assistant Inspector General for Audit.

Alvin A. Brown—Deputy Assistant Inspector General for Audit.

Lisa Goldfluss—Legal Counsel to the Inspector General.

Aracely Nunez-Mattocks—Assistant Inspector General for Management.

Jason Carroll—Deputy Assistant Inspector General for Management.

Department of Agriculture

Phone Number: (202) 720–8001

CIGIE Liaison—Angel N. Bethea (202) 720–8001

David R. Gray—Deputy Inspector General.

Christy A. Slamowitz—Counsel to the Inspector General.

Gilroy Harden—Assistant Inspector General for Audit.

Steven H. Rickrode, Jr.—Deputy Assistant Inspector General for Audit.

Yarisis Rivera Rojas—Deputy Assistant Inspector General for Audit.

Ann M. Coffey—Assistant Inspector General for Investigations.

Peter P. Paradis, Sr.—Deputy Inspector General for Investigations.

Rodney G. DeSmet—Assistant Inspector General for Data Science.

Lane M. Timm—Assistant Inspector General for Management.

Department of Commerce

Phone Number: (202) 482–4661

CIGIE Liaison—Clark Reid (202) 482–4661

Ann Eilers—Assistant Inspector General for Administration.

Allen Crawley—Assistant Inspector General for Systems Acquisition and IT Security.

Mark Greenblatt—Assistant Inspector General for Investigations.

Andrew Katsaros—Assistant Inspector General for Audit Quality and Broadband.

Mark Zabarsky—Assistant Inspector General for Acquisition and Special Program Audits.

Richard Krasner (SL)—Satellite Analyst.

Department of Defense

Phone Number: (703) 604–8324

Acting CIGIE Liaison—Brett Mansfield (703) 604–8300

Daniel R. Blair—Deputy Chief of Staff.

Michael S. Child, Sr.—Deputy Inspector General for Overseas Contingency Operations.

Carol N. Gorman—Assistant Inspector General for Readiness and Cyber Operations.

Carolyn R. Hantz—Assistant Inspector General for Audit Policy and Oversight.

Dr. Brett Baker—Deputy Inspector General for Auditing.
Glenn A. Fine—Principal Deputy Inspector General.
Marguerite C. Garrison—Deputy Inspector General for Administrative Investigations.
Robert Kwalwasser—Assistant Inspector General for Investigative Policy & Oversight.
Kenneth P. Moorefield—Deputy Inspector General for Special Plans and Operations.
Dermot F. O'Reilly—Acting Deputy Inspector General for Investigations.
Michael J. Roark—Assistant Inspector General for Contract Management and Payment.
Henry C. Shelley, Jr.—General Counsel.
Steven A. Stebbins—Chief of Staff.
Randolph R. Stone—Deputy Inspector General for Policy and Oversight.
Anthony C. Thomas—Deputy Inspector General for Intelligence and Special Program Assessments.
Jacqueline L. Wicecarver—Assistant Inspector General for Acquisition, Parts, and Inventory.
Lorin T. Venable—Assistant Inspector General for Financial Management and Reporting.

Department of Education

Phone Number: (202) 245–6900

CIGIE Liaison—Janet Harmon (202) 245–6076

David Morris—Assistant Inspector General for Management Services.
Patrick Howard—Assistant Inspector General for Audit.
Bryon Gordon—Deputy Assistant Inspector General for Audit.
Aaron Jordan—Assistant Inspector General for Investigations.
Mark Smith—Deputy Assistant Inspector General for Investigations.
Charles Coe—Assistant Inspector General for Information Technology Audits and Computer Crime Investigations.
Marta Erceg—Counsel to the Inspector General.

Department of Energy

Phone Number: (202) 586–4393

CIGIE Liaison—Tara Porter (202) 586–5798

April Stephenson—Assistant Inspector General for Audits and Inspections.
Sarah Nelson—Assistant Inspector General for Audits and Administration.
Michelle Anderson—Assistant Inspector General for Audits and Inspections.
John Dupuy—Assistant Inspector General for Investigations.
Tara Porter—Assistant Inspector General for Management and Administration.
Virginia Grebasch—Counsel to the Inspector General.
David Sedillo—Deputy Assistant Inspector General for Audits and Inspections.
Jack Rouch—Deputy Assistant Inspector General for Audits.
Debra Solmonson—Deputy Assistant Inspector General for Audits and Inspections.

Environmental Protection Agency

CIGIE Liaison—Jennifer Kaplan (202) 566–0918

Charles Sheehan—Deputy Inspector General.
Patrick Sullivan—Assistant Inspector General for Investigations.
Carolyn Copper—Assistant Inspector General for Program Evaluation.
Alan Larsen—Counsel to the Inspector General and Assistant Inspector General for Congressional and Public Affairs.
Kevin Christensen—Assistant Inspector General for Audits.

Federal Labor Relations Authority

Phone Number: (202) 218–7744

CIGIE Liaison—Dana Rooney (202) 218–7744

Dana Rooney—Inspector General.

Federal Maritime Commission

Phone Number: (202) 523–5863

CIGIE Liaison—Jon Hatfield (202) 523–5863

Jon Hatfield—Inspector General.

Federal Trade Commission

Phone Number: (202) 326–3295

CIGIE Liaison—Roslyn A. Mazer (202) 326–3295

Roslyn A. Mazer—Inspector General.

General Services Administration

Phone Number: (202) 501–0450

CIGIE Liaison—Sarah S. Breen (202) 219–1351

Robert C. Erickson—Deputy Inspector General.
R. Nicholas Goco—Assistant Inspector General for Auditing.
Lee Quintyne—Assistant Inspector General for Investigations.
James E. Adams—Deputy Assistant Inspector General for Investigations.
Stephanie E. Burgoyne—Assistant Inspector General for Administration.
Larry L. Gregg—Associate Inspector General.
Patricia D. Sheehan—Assistant Inspector General for Inspections.

Department of Health and Human Services

Phone Number: (202) 619–3148

CIGIE Liaison—Elise Stein (202) 619–2686

Joanne Chiedi—Principal Deputy Inspector General.
Robert Owens, Jr.—Deputy Inspector General for Management and Policy.
Caryl Brzymialkiewicz—Assistant Inspector General/Chief Data Officer.
Gary Cantrell—Deputy Inspector General for Investigations.
Les Hollie—Assistant Inspector General for Investigations.
Thomas O'Donnell—Assistant Inspector General for Investigations.
Tyler Smith—Assistant Inspector General for Investigations.
Suzanne Murrin—Deputy Inspector General for Evaluation and Inspections.
Erin Bliss—Assistant Inspector General for Evaluation and Inspections.
Ann Maxwell—Assistant Inspector General for Evaluation and Inspections.
Gregory Demske—Chief Counsel to the Inspector General.
Robert DeConti—Assistant Inspector General for Legal Affairs.
Gloria Jarmon—Deputy Inspector General for Audit Services.
Amy Frontz—Assistant Inspector General for Audit Services.
Brian Ritchie—Assistant Inspector General for Audit Services.

Department of Homeland Security

Phone Number: (202) 254–4100

CIGIE Liaison—Erica Paulson (202) 254–0938

John Kelly—Deputy Inspector General.
Laurel Rimon—Counsel to the Inspector General.
Mark Bell—Assistant Inspector General for Audits.
Donald Bumgardner—Deputy Assistant Inspector General for Audits.
Maureen Duddy—Deputy Assistant Inspector General for Audits.
Thomas Salmon—Assistant Inspector General for Emergency Management Oversight.
Sondra McCauley—Assistant Inspector General for Information Technology Audits.
Anne L. Richards—Assistant Inspector General for Inspections and Evaluation.
Andrew Oosterbaan—Assistant Inspector General for Investigations.
Michele Kennedy—Deputy Inspector General for Investigations.
Dennis McGunagle—Deputy Inspector General for Investigations.
John E. McCoy II—Assistant Inspector General for Integrity and Quality Oversight.

Louise M. McGlathery—Assistant Inspector General for Management.

Doris A. Wojnarowski—Deputy Assistant Inspector General for Management.

James P. Gaughran—Whistleblower Protection Ombudsman.

Department of Housing and Urban Development

Phone Number: (202) 708–0430

CIGIE Liaison—Michael White (202) 402–8410

Joe Clarke—Assistant Inspector General for Investigations.

Nicholas Padilla—Deputy Assistant Inspector General for Investigations.

Randy McGinnis—Assistant Inspector General for Audit.

Frank Rokosz—Deputy Assistant Inspector General for Audit.

John Buck—Deputy Assistant Inspector General for Audit.

Kimberly Randall—Deputy Assistant Inspector General for Audit.

Laura Farrior—Deputy Assistant Inspector General for Management.

Jeremy Kirkland—Counsel to the Inspector General.

Eddie Saffarinia—Sr. Advisor to the Assistant Inspector General for Management.

Department of the Interior

Phone Number: (202) 208–5745

CIGIE Liaison—Joann Gauzza (202) 208–5745

Steve Hardgrove—Chief of Staff.

Kimberly Elmore—Assistant Inspector General for Audits, Inspections and Evaluations.

Matt Elliott—Assistant Inspector General for Investigations.

Bruce Delaplaine—General Counsel.

Roderick Anderson—Assistant Inspector General for Management.

Department of Justice

Phone Number: (202) 514–3435

CIGIE Liaison—Jay Lerner (202) 514–3435

Robert P. Storch—Deputy Inspector General.

William M. Blier—General Counsel.

Daniel C. Beckhard—Assistant Inspector General for Oversight and Review.

Michael Sean O'Neill—Deputy Assistant Inspector General for Oversight and Review.

Jason R. Malmstrom—Assistant Inspector General for Audit.

Mark L. Hayes—Deputy Assistant Inspector General for Audit.

Eric A. Johnson—Assistant Inspector General for Investigations.

Nina S. Pelletier—Assistant Inspector General for Evaluation and Inspections.

Gregory T. Peters—Assistant Inspector General for Management and Planning.

Cynthia Lowell—Deputy Assistant Inspector for Management and Planning.

Department of Labor

Phone Number: (202) 693–5100

CIGIE Liaison—Luiz Santos (202) 693–7062

Larry D. Turner—Deputy Inspector General.

Howard Shapiro—Counsel to the Inspector General.

Elliot P. Lewis—Assistant Inspector General for Audit.

Debra D. Pettitt—Deputy Assistant Inspector General for Audit.

Cheryl Garcia—Assistant Inspector General for Labor Racketeering and Fraud Investigations.

Thomas D. Williams—Assistant Inspector General for Management and Policy.

Charles Sabatos—Deputy Assistant Inspector General for Management and Policy.

Jessica Southwell—Chief Performance and Risk Management Officer.

National Aeronautics and Space Administration

Phone Number: (202) 358–1220

CIGIE Liaison—Renee Juhans (202) 358–1712

Gail A. Robinson—Deputy Inspector General.

Frank LaRocca—Counsel to the Inspector General.

James R. Ives—Assistant Inspector General for Investigations.

James L. Morrison—Assistant Inspector General for Audits.

Ross W. Weiland—Assistant Inspector General for Management Planning.

National Labor Relations Board

Phone Number: (202) 273–1960

CIGIE Liaison—Robert Brennan (202) 273–1960

David P. Berry—Inspector General.

National Science Foundation

Phone Number: (703) 292–7100

CIGIE Liaison—Susan Carnohan (703) 292–5011

Alan Boehm—Assistant Inspector General for Investigations.

Kenneth Chason—Counsel to the Inspector General.

Nuclear Regulatory Commission

Phone Number: (301) 415–5930

CIGIE Liaison—Judy Gordon (301) 415–5913

David C. Lee—Deputy Inspector General.

Joseph A. McMillan—Assistant Inspector General for Investigations.

Office of Personnel Management

Phone Number: (202) 606–1200

CIGIE Liaison—Joyce D. Price (202) 606–2156

Norbert E. Vint—Acting Inspector General.

J. David Cope—Acting Deputy Inspector General.

James L. Ropelewski—Assistant Inspector General for Management.

Michelle B. Schmitz—Assistant Inspector General for Investigations.

Michael R. Esser—Assistant Inspector General for Audits.

Melissa D. Brown—Deputy Assistant Inspector General for Audits.

Lewis F. Parker—Deputy Assistant Inspector General for Audits.

Gopala Seelamneni—Chief Information Technology Officer.

Peace Corps

Phone Number: (202) 692–2900

CIGIE Liaison—Joaquin Ferrao (202) 692–2921

Kathy Buller—Inspector General (Foreign Service).

United States Postal Service

Phone Number: (703) 248–2100

CIGIE Liaison—Agapi Doulaveris (703) 248–2286

Elizabeth Martin—General Counsel.

Gladis Griffith—Deputy General Counsel.

Mark Duda—Assistant Inspector General for Audits.

Railroad Retirement Board

Phone Number: (312) 751–4690

CIGIE Liaison—Jill Roellig (312) 751–4993

Patricia A. Marshall—Counsel to the Inspector General.

Heather Dunahoo—Assistant Inspector General for Audit.

Louis Rossignuolo—Assistant Inspector General for Investigations.

Small Business Administration

Phone Number: (202) 205–6586

CIGIE Liaison—Robert F. Fisher (202) 205–6583 and Sheldon R. Shoemaker (202) 205–0080

Hannibal M. Ware—Deputy Inspector General.

Troy M. Meyer—Assistant Inspector General for Auditing.

Mark P. Hines—Assistant Inspector General for Investigations.

Robert F. Fisher—Assistant Inspector General for Management and Administration.

Social Security Administration

Phone Number: (410) 966–8385

CIGIE Liaison—Kristin Klima (202) 358–6319

Rona Lawson—Assistant Inspector General for Audit.

Joseph Gangloff—Counsel to the Inspector General.

Michael Robinson—Assistant Inspector General for Investigations.

Kelly Bloyer—Assistant Inspector General for Communications and Resource Management.

Special Inspector General for Troubled Asset Relief Program

Phone Number: (202) 622–1419

CIGIE Liaison—B. Chad Bungard (202) 927–8938

Peggy Ellen—Deputy Special Inspector General.

Charles (Chris) Gregorski—Deputy Special Inspector General, Investigations.

B. Chad Bungard—General Counsel.

Jenniffer Wilson—Deputy Special Inspector General, Audit and Evaluations.

Department of State and the Broadcasting Board of Governors

Phone Number: (202) 663–0340

CIGIE Liaison—Richard Puglisi (202) 663–0662

Emilia DiSanto—Deputy Inspector General.

Michael Mobbs—General Counsel.

Norman P. Brown—Assistant Inspector General for Audits.

Sandra J. Lewis—Assistant Inspector General for Inspections.

Geoffrey A. Cherrington—Assistant Inspector General for Investigations.

Karen J. Ouzts—Assistant Inspector General for Management.

Jennifer L. Costello—Assistant Inspector General for Evaluations and Special Projects.

Gayle Voshell—Deputy Assistant Inspector General for Audits.

Tinh T. Nguyen—Deputy Assistant Inspector General for Middle East Region Operations.

Harrison Ford—Deputy Assistant Inspector General for Inspections.

Michael Ryan—Deputy Assistant Inspector General for Investigations.

Cathy D. Alix—Deputy Assistant Inspector General for Management.

Department of Transportation

Phone Number: (202) 366–1959

CIGIE Liaison—Nathan P. Richmond: (202) 493–0422

Mitchell L. Behm—Deputy Inspector General.

Brian A. Dettelbach—Assistant Inspector General for Legal, Legislative, and External Affairs.

Dr. Eileen Ennis—Assistant Inspector General for Administration.

Michelle T. McVicker—Principal Assistant Inspector General for Investigations.

Max Smith—Deputy Assistant Inspector General for Investigations.

Joseph W. Comé—Principal Assistant Inspector General for Auditing and Evaluation.

Charles A. Ward—Assistant Inspector General for Aviation Audits.

Matthew E. Hampton—Assistant Inspector General for Aviation Audits.

Barry DeWeese—Assistant Inspector General for Surface Transportation Audits.

Louis C. King—Assistant Inspector General for Financial and Information Technology Audits.

Mary Kay Langan-Feirson—Assistant Inspector General for Acquisition and Procurement Audits.

Department of the Treasury

Phone Number: (202) 622–1090

CIGIE Liaison—Susan G. Marshall (202) 927–9842

Richard K. Delmar—Counsel to the Inspector General.

Tricia L. Hollis—Assistant Inspector General for Management.

John L. Phillips—Assistant Inspector General for Investigations.

Jerry S. Marshall—Deputy Assistant Inspector General for Investigations.

Donna F. Joseph—Deputy Assistant Inspector General for Cyber and Financial Assistance Audit.

Lisa A. Carter—Deputy Assistant Inspector General for Audit (Financial Sector Audits).

Treasury Inspector General for Tax Administration/Department of the Treasury

Phone Number: (202) 622–6500

CIGIE Liaison— David Barnes (Acting) (202) 622–3062

Timothy Camus—Deputy Inspector General for Investigations.

Michael McKenney—Deputy Inspector General for Audit.

Michael Delgado—Assistant Inspector General for Investigations.

Russell Martin—Assistant Inspector General for Audit (Returns Processing & Account Services).

Greg Kutz—Acting Deputy Inspector General for Inspections and Evaluations/Assistant Inspector General for Audit (Management Services & Exempt Organizations).

Matthew Weir—Assistant Inspector General for Audit (Compliance and Enforcement Operations).

Gayle Hatheway—Deputy Assistant Inspector General for Investigations

James Jackson—Deputy Assistant Inspector General for Investigations.

Randy Silvis—Deputy Assistant Inspector General for Investigations.

Gladys Hernandez—Chief Counsel.

George Jakabcin—Chief Information Officer.

Thomas Carter—Deputy Chief Counsel.

Department of Veterans Affairs

Phone Number: (202) 461–4720

CIGIE Liaison—Megan VanLandingham (202) 461–4720

Quentin G. Aucoin—Assistant Inspector General for Investigations.

Gary K. Abe—Deputy Assistant Inspector General for Audits and Evaluations (Field Operations).

Jason R. Woodward—Deputy Assistant Inspector General for Management and Administration.

John D. Daigh—Assistant Inspector General for Healthcare Inspections.

Claire McDonald—Deputy Assistant Inspector General for Healthcare Inspections.

Dated: August 25, 2016.

Mark D. Jones,

Executive Director.

[FR Doc. 2016–20791 Filed 8–29–16; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: Thursday, September 22, 2016, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CAPT Edward Norton, DFO, Uniform Formulary Beneficiary Advisory Panel, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Telephone: (703) 681–2890. Fax: (703) 681–1940. Email Address: *dha.ncr.health-it.mbx.baprequests@mail.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended).

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In
2. Welcome and Opening Remarks
3. Public Citizen Comments
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item)
   a. Topical Acne and Rosacea Agents
   b. Migraine Agents—Triptans Agents
   c. Alcohol Deterrents; Narcotic Antagonists
5. Over-The-Counter Program
6. Designated Newly FDA Approved Drugs
7. Pertinent Utilization Management Issues
8. Panel Discussions and Vote

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 Code of Federal Regulations (CFR) 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work Meeting from 8:30 a.m. to 9:00 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *http://facadatabase.gov/.* Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a "Sign-Up Roster" available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1-hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: August 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20717 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Closed Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD), Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

ACTION: Federal Advisory Committee meeting notice.

SUMMARY: The Department of Defense announces the following closed Federal Advisory Committee meeting of the Threat Reduction Advisory Committee (TRAC).

DATES: Thursday, September 29, 2016, from 8:30 a.m. to 5 p.m. and Friday, September 30, 2016, from 8:30 a.m. to 3 p.m.

ADDRESSES: CENTRA Technology Inc., Arlington, VA on September 29, 2016, and CENTRA Technology, Inc., Arlington, VA and the Pentagon, Washington, DC on September 30, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, DoD, Defense Threat Reduction Agency (DTRA) J2/5/AC, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.p.hostyn.civ@mail.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The TRAC will obtain, review, and evaluate classified information related to the TRAC's mission to provide advice on technology security, Combating Weapons of Mass Destruction (CWMD), counterterrorism, and counterproliferation.

Agenda:

All discussions for the two-day meeting will be classified at the secret level or higher. On Thursday, September 29, Designated Federal Officer William Hostyn will make his remarks, and then the TRAC Chair, Ambassador Ronald Lehman, will open the meeting with comments that outline the topics to be covered in the two-day meeting. Following the opening remarks, the TRAC will hear from the Principal Deputy, Performing the Duties of the Assistant Secretary of Defense for Nuclear, Chemical and Biological Defense Programs, Dr. Arthur Hopkins on updates regarding Unified Command Plan changes and the implications for the DoD mission of CWMD. Following Dr. Hopkins' remarks, there will be a classified intelligence briefing covering emerging biological threats relating to state and non-state actors. The TRAC will then receive a classified brief on ''Theories of Victory, Red and Blue'' from Dr. Roberts of Lawrence Livermore National Laboratory, which will detail the shift from global to regional conflict as the central paradigm of 21st century strategic conflict and assess regional powers' evolving notions of how to deter U.S. power projection and the U.S. response. Next, the TRAC will hear from Dr. William Schneider on cross domain deterrence issues affecting the nuclear-armed escalatory matrix. The TRAC will have a working lunch and will receive a classified briefing from the Defense Threat Reduction Agency on biological detection capabilities. Following that discussion, the TRAC will discuss, deliberate, and finalize the findings and recommendations of the studies on Russian and Chinese provocations as well as CWMD in North Korea in preparation for the meeting on day two with the TRAC's sponsor, Under Secretary of Defense for Acquisition, Technology and Logistics.

The TRAC will continue the meeting on September 30, 2016. The group will first discuss prospective new studies and next steps for the TRAC in 2017–2018 based on the sponsor's guidance and direction. The TRAC will then receive a classified brief from Dr. Bates on emerging biological threats and technological proliferation issues. The TRAC members will review the final recommendations on Russia, China and North Korea over a working lunch. The TRAC will then transition to the Pentagon, where they will provide Under Secretary Kendall with a brief from the previous day's meeting on the finding and recommendations on Russia and China Provocations and CWMD in North Korea. At the conclusion of the discussion, the Chair will adjourn the 38th Plenary.

Meeting Accessibility: Pursuant to section 10(d) of the FACA, 5 U.S.C. 552b(c), and 41 CFR 102–3.155, the DoD has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology, and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that all sessions of this meeting are required to be closed to the public because the discussions will contain classified information and matters covered by 5 U.S.C. 552b(c)(1). Such classified matters are inextricably intertwined with the unclassified material and cannot reasonably be segregated into separate discussions without disclosing secret-level or higher material.

Advisory Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, DoD, Defense Threat Reduction Agency, J2/5/AC, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.p.hostyn.civ@mail.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to section 10(a)(3) of FACA and 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the TRAC at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the TRAC's Designated Federal Officer. The Designated Federal Officer's contact information is listed in this notice, or it can be obtained from the General Services Administration's FACA Database: *http://www.facadatabase.gov/committee/committee.aspx?cid=1663&aid=41.* Written statements that do not pertain to a scheduled meeting of the TRAC may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all TRAC members.

Dated: August 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20895 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board; Notice of Federal Advisory Committee meeting

AGENCY: Office of the Secretary of Defense, Reserve Forces Policy Board, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: Thursday, September 15, 2016 from 8 a.m. to 4:10 p.m.

ADDRESSES: The address of the open meeting is the Army Navy Country Club, 1700 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Sabol, Designated Federal Officer, (703) 681–0577 (Voice), (703) 681–0002 (Facsimile), Email: *Alexander.J.Sabol.Civ@Mail.Mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: *http://rfpb.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the RFPB's Web site.

SUPPLEMENTARY INFORMATION: This meeting notice is being published under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to obtain, review, and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the Reserve Components.

Agenda: The RFPB will hold a meeting from 8:00 a.m. to 4:10 p.m. The meeting will be open to the public and will consist of the following briefings: the Chief of Staff, United States Air Force, will discuss his views regarding the readiness challenges for the United States Air Force and the Air Force Reserve Component's future challenges for the ''Operational Reserve'' as part of the Total Force. The Under Secretary of the Navy will discuss the key challenges and priorities for the Navy in this period of fiscal uncertainty and an increasingly challenging security environment, as well as her views regarding the Navy

Reserve's potential use and readiness challenges of the "Operational Reserve." The Chief, National Guard Bureau will discuss his views regarding the readiness challenges for the National Guard and his thoughts on the future of the "Operational Reserve" concept as part of the Total Force. The Deputy Assistant Secretary of Defense (Reserve Integration) will discuss his views and observations on the recent Office of the Under Secretary of Defense Personnel & Readiness (OUSD P&R) reorganization and specifically his role and progress regarding Reserve integration within OUSD P&R. The Chair of the Supporting & Sustaining Reserve Component Personnel Subcommittee will discuss the proposed Department of Defense's personnel system reforms concerning the Military's Blended Retirement System, and the findings from the Air Force's and Army's Integrated Pay and Personnel System. Additional discussions will cover updates to the RFPB recommendations to the Secretary of Defense on Duty Status Reform, the 20% Military Technician conversion, the SASC FY 2017 NDAA concerning the mandated General/Flag Officer reductions, AC/RC Permeability, USERRA changes, and RC Unemployment issues, and the effects of these reforms on the Reserve Components. The Chair of the Ensuring a Ready, Capable, Available and Sustainable Operational Reserve Subcommittee will discuss the Declaration of National Emergency (DNE) Act and how it relates to existing Reserve Components authorities, and how Reserve Components employment would change if the DNE is not renewed. Additional discussions will cover updates of the status on the RFPB's recommendation to Secretary of Defense on the Operational Reserve definition and findings concerning the Reserve Components' medical readiness tracking metrics and methods. The RFPB meeting will conclude with the Chairman's time, where he will discuss the Provisions on General and Flag Officers reductions in the proposed NDAA 2017; will present the final edition of the RFPB Issues New Administration Transition Book that will be provided for the Department's briefings for the New Administration; will provide an update on the Goldwater Nichols Reform Efforts and current budget information, will present the FY 2018 RFPB meeting dates, and present for consideration the proposed contents of the FY 2016 RFPB Annual Report.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meeting is open to the public from 8:00 a.m. to 4:10 p.m. Seating is on a first-come, first-served basis. All members of the public who wish to attend the public meeting must contact Mr. Alex Sabol, the Designated Federal Officer, not later than 12:00 p.m. on Wednesday, September 14, 2016, as listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, interested persons may submit written statements to the RFPB about its approved agenda or at any time on the RFPB's mission. Written statements should be submitted to the RFPB's Designated Federal Officer at the address, email, or facsimile number listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at the planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the RFPB until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the RFPB members before the meeting that is the subject of this notice. Please note that since the RFPB operates under the provisions of the FACA, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the RFPB's Web site.

Dated: August 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20835 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2012–HA–0165]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Control Number 0720–0022.

Type of Request: Revision.

Number of Respondents: 150,000.

Responses per Respondent: 5.

Annual Responses: 750,000.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 150,000.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Individuals or households, Business or Other For-Profit, and Not-For-Profit Institutions.

Frequency: Annually and On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center

Drive, East Tower, Suite 02G09,
Alexandria, VA 22350–3100.

Dated: August 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20858 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 1:00 p.m. to 5:00 p.m. on Wednesday, September 7, 2016. Public registration will begin at 12:45 p.m. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M1. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil,* phone: 571–256–9004.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Government-Industry Advisory Panel was unable to provide public notification of its meeting of September 7, 2016, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the sixth meeting of the Government-Industry Advisory Panel with a series of meetings planned through December 14, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Continued planning, discussion and breakdown of statutes 10 U.S.C. 2320 and 2321; (2) Final discussions on comments received via **Federal Register** Request for Public Comment; (3) Briefing from Joint Program Executive Officer; (4) Air Force Legal Briefing on Intellectual Property Alternatives; (5) Public Comments; (7) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the September 7, 2016 meeting will be available as requested or at the following site: *https://database.faca.gov/committee/meetingdocuments.aspx?flr=141536&cid=2561.* Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (September 1) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 12:30 p.m. on September 7. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: August 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20810 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0070]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: ASSIST Database; Numerous Forms; OMB Control Number 0704–0188.

Type of Request: Revision.

Number of Respondents: 1040.

Responses per Respondent: 432.

Annual Responses: 449,280.

Average Burden per Response: 66 hours.

Annual Burden Hours: 29,652,480.

Needs and Uses: Data Item Descriptions in the ASSIST database, formerly the Acquisition Management Systems and Data Requirements Control List (AMSDL), contain data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapons systems critical to the national defense.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari. Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: August 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20821 Filed 8–29–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Friday, September 16, 2016, 9:00 a.m.–3:00 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elizabeth Davison, Federal Coordinator, EMAB (EM–3.2), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone (202) 586–1135; fax (202) 586–0293 or email: *elizabeth.davison@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics:

- EM Program Update
- Discussion of Board Structure and Work Plan Topics
- New Business

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elizabeth Davison at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Elizabeth Davison at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Elizabeth Davison at the address or phone number listed above. Minutes will also be available at the following Web site: *http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab.*

Issued at Washington, DC, on August 24, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–20787 Filed 8–29–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy.

ACTION: Notice of cancellation of open meeting.

SUMMARY: On August 16, 2016, the Department of Energy (DOE) published a notice of open meeting scheduled for September 8, 2016, of the Environmental Management Site-Specific Advisory Board, Portsmouth. This notice announces the cancellation of this meeting. The meeting is being cancelled because the board will not have a quorum due to scheduling conflicts by members. The next regular meeting will be held on October 6, 2016.

DATES: The meeting scheduled for September 8, 2016, announced in the August 16, 2016, issue of the **Federal Register** (FR Doc. 2016–19423, 81 FR 54570), is cancelled. The next regular meeting will be held on October 6, 2016.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

Issued at Washington, DC, on August 24, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–20788 Filed 8–29–16; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–172–000.
Applicants: ITC Midwest LLC.
Description: Application under Section 203 for Acquisition of Assets of ITC Midwest LLC.
Filed Date: 8/24/16.
Accession Number: 20160824–5134.
Comments Due: 5 p.m. ET 9/14/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–678–008.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–08–22_VLR Settlement Compliance Filing to be effective 9/1/2012.
Filed Date: 8/22/16.
Accession Number: 20160822–5241.
Comments Due: 5 p.m. ET 9/12/16.

Docket Numbers: ER16–2445–000.
Applicants: California Independent System Operator Corporation.
Description: Report Filing: 2016–08–23 Errata to Bidding Rules Commitment Costs Attach A and B to be effective N/A.
Filed Date: 8/23/16.
Accession Number: 20160823–5167.
Comments Due: 5 p.m. ET 9/13/16.

Docket Numbers: ER16–2467–000.
Applicants: NSTAR Electric Company.
Description: Tariff Cancellation: Notice of Cancellation of Exelon West Medway Design and Engineering Agreement to be effective 5/31/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5001.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2468–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3239 WAPA–UGP and Montana-Dakota Utilities Co. Attachment AO to be effective 8/1/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5081.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2469–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 607R28 Westar Energy, Inc. NITSA NOA to be effective 8/1/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5083.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2470–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: First Revised Service Agreement No. 1141, Queue Position AA2–131 to be effective 7/27/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5104.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2471–000.
Applicants: Ontario Power Generation Energy Trading.
Description: Section 205(d) Rate Filing: OPGET MBR Tariff Filing to be effective 8/25/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5133.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2472–000.
Applicants: PacifiCorp.
Description: Section 205(d) Rate Filing: UAMPS Construction Agmt—Lehi Temp Tap to be effective 10/24/2016.
Filed Date: 8/24/16.
Accession Number: 20160824–5143.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2473–000.
Applicants: Alabama Power Company.
Description: Tariff Cancellation: Termination of UPS Agreements to be effective 12/31/2011.
Filed Date: 8/24/16.
Accession Number: 20160824–5164.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2474–000.
Applicants: Georgia Power Company.
Description: Tariff Cancellation: Termination of UPS Agreements to be effective 12/31/2011.
Filed Date: 8/24/16.
Accession Number: 20160824–5166.
Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2475–000.

Applicants: Gulf Power Company.

Description: Tariff Cancellation: Termination of UPS Agreements to be effective 12/31/2011.

Filed Date: 8/24/16.

Accession Number: 20160824–5170.

Comments Due: 5 p.m. ET 9/14/16.

Docket Numbers: ER16–2476–000.

Applicants: Mississippi Power Company.

Description: Tariff Cancellation: Termination of UPS Agreements to be effective 12/31/2011.

Filed Date: 8/24/16.

Accession Number: 20160824–5173.

Comments Due: 5 p.m. ET 9/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20756 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–478–000]

Gulf South Pipeline Company, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed St. Charles Parish Expansion Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the St. Charles Parish Expansion Project (Project) involving construction and operation of natural gas pipeline and compression facilities by Gulf South Pipeline Company, LP (Gulf South) in St. Charles and St. John the Baptist Parishes, Louisiana. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 23, 2016.

If you sent comments on this Project to the Commission before the opening of this docket July 11, 2016, you will need to file those comments in Docket No. CP16–478–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Gulf South provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister.*" If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–478–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Gulf South plans to begin construction of the Project in the fall of 2017 and place the facilities in-service by September 1, 2018. The Project purpose is to provide 133,333 dekatherms per day to serve Entergy Louisiana, LLC's proposed natural gas-fired power plant facility located near Montz, Louisiana.

Specifically, Gulf South proposes to construct:

- A new 5,000 horsepower compressor station near Montz, Louisiana (Montz Compressor Station);
- about 900 feet of new 16-inch-diameter pipeline; and
- auxiliary facilities.

The proposed Montz Compressor Station would be on the border of St. Charles and St. John the Baptist Parishes and would include two CAT G3608 A4 engines and Erial JGK/6 compressor units, housed in a permanent building. The proposed pipeline would commence at the Montz Compressor Station, extend approximately 900 feet southeast, and terminate at Gulf South's existing Index 270–94 Lateral in St.

Charles Parish, Louisiana. Gulf South would co-locate the proposed 16-inch-pipeline with its existing Index 270 pipeline right-of-way. Installation of the proposed pipeline would utilize a 135-foot-wide temporary construction right-of-way. Following construction, Gulf South proposes to maintain a 35-foot-wide permanent right-of-way along the pipeline route, adjacent to the existing Index 270 permanent right-of-way.

The general location of the Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 13.9 acres of land for the aboveground facilities, pipeline, and two permanent access roads. Following construction, Gulf South would maintain about 3.5 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety;
- socioeconomics; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies of the EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP16–478). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

---

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20752 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–140–000.
Applicants: Astra Wind LLC.
Description: Self-Certification of EG of Astra Wind LLC.
Filed Date: 8/22/16.
Accession Number: 20160822–5275.
Comments Due: 5 p.m. ET 9/12/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2453–000.
Applicants: Brady Interconnection, LLC.
Description: Baseline eTariff Filing: Brady Interconnection, LLC Application for market-Based Rates to be effective 10/18/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5300.
Comments Due: 5 p.m. ET 9/9/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR16–6–000.
Applicants: North American Electric Reliability Corporation.
Description: Request of the North American Electric Reliability Corporation for Acceptance of its 2017 Business Plan and Budget.
Filed Date: 8/23/16.
Accession Number: 20160823–5166.
Comments Due: 5 p.m. ET 9/13/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20751 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the wholesale markets of ISO New England Inc.:

Integrating Markets and Public Policy

August 30, 2016, 10:00 a.m.–4:30 p.m. (EST)
Seaport Hotel, One Seaport Lane, Boston, MA 02110

September 14, 2016, 10:00 a.m.–5:00 p.m. (EST)
Doubletree Hotel, 5400 Computer Drive, Westborough, MA 01581

October 6, 2016, 10:00 a.m.–5:00 p.m. (EST)
Doubletree Hotel, 5400 Computer Drive, Westborough, MA 01581

October 21, 2016, 10:00 a.m.–5:00 p.m. (EST)
Location to be determined.

November 10, 2016, 10:00 a.m.–5:00 p.m. (EST)
Doubletree Hotel, 5400 Computer Drive, Westborough, MA 01581

December 2, 2016, 10:00 a.m.–5:00 p.m. (EST)
Colonnade Seaport Hotel, 120 Huntington Ave, Boston, MA 02116

Further information may be found at *www.nepool.com/IMAPP.php.*

The discussion at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. EL13–33 and EL 14–86, *Environment Northeast et al.* v. *Bangor Hydro-Electric Company et al.*
Docket No. EL16–19, *ISO New England Inc. Participating Transmission Owners Administrative Committee*
Docket No. EL16–38, *Dominion Energy Marketing, Inc. et al.* v. *ISO New England Inc.*
Docket No. EL16–93, *NextEra Energy Resources, LLC and PSEG Companies* v. *ISO New England Inc.*
Docket No. RP16–618, *Algonquin Gas Transmission, LLC*
Docket No. ER12–1650, *Emera Maine*
Docket No. ER14–1409, *ISO New England Inc.*
Docket No. ER14–1639, *ISO New England Inc. and New England Power Pool Participants Committee*
Docket No. ER13–2266, *ISO New England Inc.*
Docket No. ER15–1429, *Emera Maine*
Docket No. ER16–551, *ISO New England Inc.*
Docket No. ER16–1301, *ISO New England Inc. and Emera Maine*
Docket No. ER16–1041, *ISO New England Inc.*
Docket No. ER16–1904, *ISO New England Inc.*
Docket No. ER16–2126, *ISO New England Inc. and New England Power Pool Participants Committee*
Docket No. ER16–2215, *ISO New England Inc.*
Docket No. ER16–2283, *Genbright LLC*
Docket No. ER16–2451, *ISO New England Inc. and New England Power Pool Participants Committee*

For more information, contact Michael Cackoski, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6169 or *Michael.Cackoski@ferc.gov.*

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20754 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF16–5–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Northeast Supply Enhancement Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Northeast Supply Enhancement (NESE) Project involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Lancaster County, Pennsylvania; Somerset and Middlesex Counties, New Jersey; and in State of New Jersey and State of New York marine waters in Raritan Bay and Lower New York Bay. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 23, 2016.

If you sent comments on this project to the Commission before the opening of this docket on May 18, 2016, you will need to file those comments in Docket No. PF16–5–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF16–5–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Wednesday, September 7, 2016, 5:00–9:00 p.m.	George Bush Senior Center, 1 Old Bridge Plaza, Old Bridge, NJ 08857.
Thursday, September 8, 2016, 5:00–9:00 p.m.	Aviator Sports and Events Center at Floyd Bennett Field, 3159 Flatbush Avenue, Brooklyn, NY 11234.
Wednesday, September 14, 2016, 5:00–9:00 p.m.	Solanco High School, 585 Solanco Road, Quarryville, PA 17566.
Thursday, September 15, 2016, 5:00–9:00 p.m.	Franklin Township Community Center, 505 Demott Lane, Somerset, NJ 08873.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the EIS to be prepared for the project. Individual verbal comments will be taken on a one-on-one basis with one of two stenographers. Because we anticipate a large amount of interest from affected landowners and other concerned citizens, this format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 5:00 p.m. to 9:00 p.m. Eastern Time Zone. You may arrive at any time after 5:00 p.m. There *will not* be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival, and will discontinue handing them out at 8:00 p.m. Comments will be taken until 9:00 p.m. or 8:00 p.m., if no additional numbers have been handed out, whichever comes first. Your verbal scoping comments will be recorded by the stenographer (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on

FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 3 to 5 minutes may be implemented for each commenter. It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Planned Project

Transco plans to expand its existing interstate natural gas transmission system in Pennsylvania, New Jersey, and New York. The NESE Project would provide about 400 million standard cubic feet of natural gas per day to National Grid for service to National Grid's domestic and commercial customers. According to Transco, its project would ensure adequate natural gas supply to support demand growth, provide natural gas supply diversification and reliability, and improve air quality as a result of conversion from heating oil systems to natural gas.

The NESE Project would consist of the following facilities:

- A 10.1-mile-long, 42-inch-diameter pipeline loop[2] of Transco's Mainline in Lancaster County, Pennsylvania (Quarryville Loop);
- a 3.4-mile-long, 26-inch-diameter pipeline loop of the Lower New York Bay Lateral in Middlesex County, New Jersey (Madison Loop);
- a 23.4-mile-long, 26-inch-diameter pipeline loop of the Lower New York Bay Lateral beginning at the coast of Middlesex County, New Jersey and crossing New Jersey and New York State marine waters to the existing Rockaway Transfer Point (Raritan Bay Loop);
- an additional 21,000 horsepower of compression at Compressor Station 200 in Chester County, Pennsylvania;
- a new 32,000 horsepower compressor station in Somerset County, New Jersey (Compressor Station 206); and
- appurtenant underground and aboveground facilities.

The general location of the facilities is shown in appendix 2.

Transco is currently considering two locations for Compressor Station 206 in Somerset County, New Jersey, referred to as Alternative 2 and Alternative 3. Because Transco is in the planning stages of the project, we are requesting comments on both Alternative 2 and Alternative 3 for Compressor Station 206.

Land Requirements for Construction

The planned pipelines would generally parallel Transco's existing system. Transco is evaluating onshore and offshore land requirements for pipeline construction and will provide this information when it is available. Compressor Station 206 Alternative 2 consists of a 36 acre parcel and Alternative 3 consists of a 52 acre parcel. Modification of existing Compressor Station 200 in Chester County, Pennsylvania, would occur within the boundary of the facility.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- socioeconomics;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. The U.S. Environmental Protection Agency has expressed its intention to participate as a cooperating agency in the preparation of the EIS to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPOs), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

---

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities, the environmental information provided by Transco, comments received at Transco's open houses, and those comments filed to-date. This preliminary list of issues may change based on your additional comments and our analysis:

- Potential impact of planned Compressor Station 206 on property values, air quality, health, noise, traffic, soil, groundwater, and public safety;
- potential impact on Compressor Station 206 from blasting activity at the Trap Rock Industries, Inc. quarry;
- alternative compressor station locations;
- the potential for the horizontal directional drill method to impact drinking water wells; and
- potential impacts on aquatic resources in Raritan Bay and Lower New York Bay.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version, or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once Transco files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF16–5). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings/sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20755 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–21–000]

C.P. Crane LLC; Notice of Filing

Take notice that on August 24, 2016, C.P. Crane LLC submitted tariff filing per: Refund Report to be effective N/A, pursuant to Section 2.4 of the Offer of Settlement that the Federal Energy Regulatory Commission (Commission) accepted on June 24, 2016.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

---

[5] The Advisory Council on Historic Preservation regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[1] *C.P. Crane LLC,* 155 FERC ¶ 61,306 (2016).

Comment Date: 5:00 p.m. Eastern Time on September 14, 2016.

Dated: August 24, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20753 Filed 8–29–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9951–65–OA]

Request for Nominations of Experts To Augment the Science Advisory Board Ecological Processes and Effects Committee To Provide Advice on Methods for Deriving Water Quality Criteria for the Protection of Aquatic Life

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), SAB Staff Office is requesting public nominations of scientific experts to augment the SAB Ecological Processes and Effects Committee (EPEC) for review of a draft EPA document entitled "Scope and Approach for Revising USEPA's Guidelines for Deriving National Water Quality Criteria to Protect Aquatic Life."

DATES: Nominations should be submitted by September 20, 2016 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact the Designated Federal Officer, as identified below. Nominators unable to submit nominations electronically as described below may contact the Designated Federal Officer for assistance. General information concerning the EPA SAB can be found at the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB Ecological Process and Effects Committee (EPEC) is a subcommittee of the SAB that provides advice through the chartered SAB on technical issues related to EPA environmental programs and the supporting science and research to protect, sustain, and restore the health of ecosystems. The SAB and the EPEC, augmented with additional experts, will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. The augmented EPEC will provide advice through the chartered SAB on scientific and technical issues related to the Agency's proposed methods for revising and updating water quality criteria, as described in the Agency's draft scoping document, entitled "Scope and Approach for Revising USEPA's Guidelines for Deriving National Water Quality Criteria to Protect Aquatic Life." This draft document provides an overview of the framework EPA proposes to use for the phased revision of the 1985 Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses by outlining the planned scope and approach of the Guidelines revision process and introducing new and alternative methods to be considered for deriving aquatic life criteria based on the latest and most appropriate science available.

EPA's Office of Water (OW) requested an SAB consultation (*i.e.,* early advice) on their draft approach for updating and revising the EPA's 1985 methodology for deriving national Ambient Water Quality Criteria to protect aquatic life, as described in the draft scoping document. The SAB Staff Office is seeking experts to augment the SAB EPEC for this advisory activity. EPA's OW has also requested reviews of two subsequent and related draft documents: "Draft Expedited Methodologies for Deriving Water Quality Criteria for the Protection of Aquatic Life" and "Draft Revised USEPA Guidelines for Deriving Numeric Water Quality Criteria for the Protection of Aquatic Life." These draft documents are currently scheduled for completion as drafts in late 2017 and mid-2019.

Technical Contact for EPA's Draft Report: For information concerning the draft EPA report, "Scope and Approach for Revising USEPA's Guidelines for Deriving National Water Quality Criteria to Protect Aquatic Life," please contact Mike Elias, Ecological Risk Assessment Branch, Health and Ecological Criteria Division, Office of Water, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460, phone (202) 566–0120 or via email at *elias.mike@epa.gov.*

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise and research to augment the EPEC for the consultation and subsequent reviews of methods for revising Water Quality Criteria. For this effort, the SAB Staff Office seeks experts in one or more of the following areas: Aquatic toxicology; ecotoxicology; aquatic ecology; ecological risk assessment; ecological effects modeling; and statistics, especially as applied to developing robust computational methods for estimating acute and chronic effects of water pollutants on aquatic life and aquatic-dependent wildlife. Additional information about this advisory activity is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/1985%20WQ%20Criteria%20Guidelines%20Revision?OpenDocument.* Questions regarding this advisory activity should be directed to Iris Goodman, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2164, by fax at (202) 565–2098, or via email at *goodman.iris@epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the augmented EPEC panel described above. Nominations should be submitted in electronic format (preferred over hard copy) using the online nomination form under the "Nomination of Experts" category at the bottom of the SAB home page at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested below. EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Iris Goodman as indicated above in this notice. Nominations should be submitted in time to arrive no later than September 20, 2016. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates for the EPEC Augmented for Review of Aquatic Life Water Quality Criteria Methods on the SAB Web site at *http://www.epa.gov/sab* (see links under "Public Input on Membership" at the bottom of the SAB home page). Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the augmented EPEC, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees" (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded from the following URL address *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument.*

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: August 24, 2016.

Christopher S. Zarba,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2016–20851 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9951–66–OAR]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on October 18, 2016. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www2.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserv, send an email to *mccubbin.courtney@epa.gov.*

DATES: Tuesday, October 18, 2016 from 9:00 a.m. to 4:00 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at The Willard Intercontinental Hotel, 1401 Pennsylvania Ave., Washington, DC 20004. However, this date and location are subject to change and interested parties should monitor the Subcommittee Web site (above) for the latest logistical information.

FOR FURTHER INFORMATION CONTACT: Courtney McCubbin, Designated Federal Officer, Transportation and Climate Division, Mailcode 6406A, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202–564–2436; email: *mccubbin.courtney@epa.gov.*

Background on the work of the Subcommittee is available at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac* Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. McCubbin at the address above by October 4, 2016. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Ms. McCubbin (see above). To request accommodation of a disability, please contact Ms. McCubbin, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 23, 2016.

Benjamin Hengst,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 2016–20852 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1142]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission)

invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 31, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1142.

Title: Electronic Tariff filing System (ETFS), WC Docket No. 10–141.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, and 226(h)(l)(A) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $1,365,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not anticipate providing confidentiality of the information submitted by local exchange carriers. In particular, the tariffs and related documents sent to the Commission will be made public through ETFS. If the respondents submit information they believe to be confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Incumbent local exchange carriers (LECs) file their tariffs and associated documents electronically, using ETFS. ETFS has improved the usefulness of tariff filings for both filers and the public and made the tariff filing process more open, transparent, and efficient. On June 30, 2011, the Commission released a Report and Order, WC Docket No. 10–141, FCC 11–92, determining that the benefits of using ETFS for incumbent LEC tariff filings would also be obtained if all tariff filers filed electronically. Such action benefits the public and carriers by creating a central system providing on-line access to all carrier tariffs and related documents filed with the Commission. As such, competitive LECs (and other nondominant carriers) must now file tariffs and associated documents electronically.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–20750 Filed 8–29–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–956]

Disability Advisory Committee; Announcement of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the next meeting of the Commission's Disability Advisory Committee (Committee or DAC). The meeting is open to the public. During this meeting, members of the Committee will receive and discuss summaries of activities and recommendations from its subcommittees.

DATES: The Committee's next meeting will take place on Thursday, September 22, 2016, from 9:00 a.m. to 3:30 p.m. (EST).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Elaine Gardner, Consumer and Governmental Affairs Bureau: 202–418–0581 (voice); email: *DAC@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established in December 2014 to make recommendations to the Commission on a wide array of disability matters within the jurisdiction of the Commission, and to facilitate the participation of people with disabilities in proceedings before the Commission. The Committee is organized under, and operated in accordance with, the provisions of the Federal Advisory Committee Act (FACA). The Committee held its first meeting on March 17, 2015. At its September 22, 2016 meeting, the Committee is expected to receive and consider: reports on the activities of its Communications, Emergency Communications, and Video Programming Subcommittees; a report and recommendation from its Technology Transitions Subcommittee regarding amplified phones; a report and recommendation from its Cognitive Disabilities Working Group regarding best practices; and a report and three recommendations from its Relay & Equipment Distribution Subcommittee regarding: The portability of ten-digit telephone numbers and associated features from one IP-enabled relay provider to another; 911 training for VRS Communications Assistants; and establishing rules and standards for IP CTS quality of service. The Committee will also hear presentations from Commission staff on recent activities, and a presentation on the future of telecommunications, and will discuss new issues for its consideration. A limited amount of time may be available on the agenda for comments and inquiries from the public. The public may comment or ask questions of presenters via the email address *livequestions@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. If making a request for an accommodation, please include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible by sending an email to *fcc504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Last minute requests will be accepted, but may be impossible to fill. The meeting will be webcast with open captioning, at: *www.fcc.gov/live.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

D'wana Terry,

Associate Bureau Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2016–20770 Filed 8–29–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to all Interested Parties of the Termination of the Receivership of 10505—GreenChoice Bank, FSB, Chicago, Illinois

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for GreenChoice Bank FSB, Chicago, Illinois ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of GreenChoice Bank, FSB on July 25, 2014. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 24, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–20769 Filed 8–29–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Mid Illinois Bancorp, Inc., Employee Stock Ownership Plan,* Peoria, Illinois; to increase its ownership of Mid Illinois Bancorp, Inc., Peoria, Illinois, from 25.24 percent to 30 percent, and thereby increase its indirect ownership of South Side Trust and Savings Bank, Peoria, Illinois.

Board of Governors of the Federal Reserve System, August 25, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–20773 Filed 8–29–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]; [Docket 2016–0053; Sequence 23]

Submission for OMB Review; Report of Shipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning report of shipment. A notice was published in the **Federal Register** at 81 FR 39052 on June 15, 2016. No comments were received.

DATES: Submit comments on or before September 29, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0056, Report of Shipment". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0056, Report of Shipment" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat

Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0056, Report of Shipment.

Instructions: Please submit comments only and cite Information Collection 9000–0056, Report of Shipment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Acquisition Policy, by telephone at 202–501–1448 or *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Per FAR 47.208, military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en-route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. Unless otherwise directed by a contracting officer, a contractor shall send the notice to the consignee transportation office at least twenty-four hours before the arrival of the shipment.

B. Annual Reporting Burden

Respondents: 113.
Responses per Respondent: 71.
Annual Responses: 8,023.
Hours per Response: .167.
Total Burden Hours: 1,340.

The public burden hours represent a decrease from the previously approved information collection.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: August 25, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–20784 Filed 8–29–16; 8:45 am]

BILLING CODE 6820–EP–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 108302016–1111–06]

Amendment to Initial Funded Priorities List

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice of amendment to initial funded priorities list.

SUMMARY: On August 24, 2016, the Gulf Coast Ecosystem Restoration Council (Council) amended its Initial Funded Priorities List (FPL) to approve implementation funding for the Apalachicola Bay Oyster Restoration project (Project) in Florida. The Council approved $3,978,000 in implementation funding for this Project. The Council also approved reallocating $702,000 from project planning to project implementation, after any remaining planning expenses have been met. The total amount available for implementation of the Project is therefore $4,680,000. These funds will be used to restore approximately 251 acres of oyster beds, which is an increase from the 219 acres originally proposed in the FPL.

To comply with the National Environmental Policy Act (NEPA), the Council has adopted an existing Environmental Assessment (EA) that addresses the activities in the Project. In so doing, the Council is expediting project implementation, reducing planning costs and increasing the ecological benefits of this Project by using the savings in planning funds to expand the Project by approximately 32 acres.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *john.ettinger@restorethegulf.gov* or contact John Ettinger at (504) 444–3522.

SUPPLEMENTARY INFORMATION:

I. Background

The *Deepwater Horizon* oil spill led to passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act), which dedicates 80 percent of all Clean Water Act administrative and civil penalties related to the oil spill to the Gulf Coast Restoration Trust Fund (Trust Fund). The RESTORE Act also created the Council, an independent Federal entity comprised of the five Gulf Coast states and six Federal agencies. Among other responsibilities, the Council administers a portion of the Trust Fund known as the Council-Selected Restoration Component in order to "undertake projects and programs, using the best available science, which would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast." Additional information on the Council can be found here: *https://www.restorethegulf.gov.*

On December 9, 2015, the Council approved the FPL, which includes projects and programs approved for funding under the Council-Selected Restoration Component, along with activities that the Council identified as priorities for potential future funding. Activities approved for funding in the FPL are included in "Category 1". The priorities for potential future funding are in "Category 2." The Council approved approximately $156.6 million in FPL Category 1 restoration and planning activities, and prioritized twelve FPL Category 2 activities for possible funding in the future, subject to environmental compliance and further Council and public review. The Council included planning activities for the Apalachicola Project in Category 1 and implementation activities for the Project in Category 2 of the FPL.

The Council reserved approximately $26.6 million for implementing priority activities in the future. These reserved funds may be used to support some, all or none of the activities included in

Category 2 of the FPL and/or to support other activities not currently under consideration by the Council. As appropriate, the Council intends to review each activity in Category 2 in order to determine whether to: (1) Move the activity to Category 1 and approve it for funding, (2) remove it from Category 2 and any further consideration, or (3) continue to include it in Category 2. A Council decision to amend the FPL to move an activity from Category 2 into Category 1 must be approved by a Council vote after consideration of public and Tribal comments.

II. Environmental Compliance

Prior to approving an activity for funding in FPL Category 1, the Council must comply with NEPA and other Federal environmental laws. At the time of approval of the FPL, the Council had not complied with NEPA and other applicable laws with respect to implementation of the Project. The Council did, however, recognize the potential ecological value of the Project, based on review conducted as part of the FPL process. For this reason, the Council approved $702,000 in planning funds for this Project, a portion of which would be used to complete any needed environmental compliance activities. As noted above, the Council placed the implementation portion of this Project into FPL Category 2, pending the outcome of this environmental compliance work and further Council review. The estimated cost of the Project's implementation component was listed at $3,978,000, which would fund the restoration of approximately 219 acres of oyster beds in Apalachicola Bay. Inclusion of the Project's implementation activities into Category 2 did not in any way commit the Council to subsequently approve those implementation activities for funding.

Since approval of the FPL, Florida has collaborated with the U.S. Army Corps of Engineers (USACE) and identified an existing EA that could be used to support Council approval of implementation funding for this Project. This EA was prepared by the USACE in association with a Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act programmatic general permit (PGP). This PGP authorizes the Florida Department of Agricultural and Consumer Services to conduct aquaculture of live rock and marine bivalves in navigable waters of the U.S. within the jurisdiction of the State of Florida, provided that such activities comply with the terms and conditions of the PGP.

The Council has reviewed this EA and associated documents, including an August 13, 2015, letter from the National Oceanic and Atmospheric Administration regarding compliance with the Endangered Species Act (ESA). In addition to ESA, the EA and associated PGP address compliance with other Federal environmental laws, including the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act and more.

On June 7, 2016, the Council issued a **Federal Register** notice announcing its proposal to amend the FPL, adopt the aforementioned EA, and approve implementation funding for this Project. The Council received no public comments on this proposal.

Based on this review, the Council adopted this EA to support the approval of implementation funds for the Project, based on the condition that the Project must be implemented in accordance with the terms and conditions of the PGP and the design criteria set forth in the associated ESA programmatic consultation. Strict adherence with the terms and conditions of the PGP is necessary to ensure compliance ESA and other applicable laws. On August 24, 2016, the Council issued a Finding of No Significant Impact (FONSI) for this action, concurrent with its approval of the FPL amendment. This EA, FONSI, and the associated ESA documentation can be found here: *https://www.restorethegulf.gov/funded-priorities-list.* (See *Apalachicola Bay Oyster Restoration Project—Implementation.*)

Additional information on the Project is available in an activity-specific appendix to the FPL, which can be found here: *https://www.restorethegulf.gov.*

Justin R. Ehrenwerth,

Executive Director, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2016–20743 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–3:00 p.m., EDT, October 20, 2016.

Place: CDC, Building 21, Executive Board Room (12105) and Room 12302, 1600 Clifton Road NE., Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space and phone lines available. The meeting rooms accommodate approximately 65 people. Advance registration for in-person participation is required by October 6, 2016. The public is welcome to participate during the public comment period, which is tentatively scheduled from 2:40 p.m. to 2:45 p.m. This meeting will also be available by teleconference. Please dial (888) 324–9970 and enter code 32077657.

Purpose: The Advisory Committee to the Director, CDC, shall advise the Secretary, HHS, and the Director, CDC, on policy and broad strategies that will enable CDC to fulfill its mission of protecting health through health promotion, prevention, and preparedness. The committee recommends ways to prioritize CDC's activities, improve results, and address health disparities. It also provides guidance to help CDC work more effectively with its various private and public sector constituents to make health protection a practical reality.

Matters for Discussion: The Advisory Committee to the Director will receive updates from the State, Tribal, Local and Territorial Subcommittee; the Health Disparities Subcommittee, the Global Workgroup, and the Public Health—Health Care Collaboration Workgroup, as well as an update from the CDC Director.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Carmen Villar, MSW, Designated Federal Officer, ACD, CDC, 1600 Clifton Road NE., M/S D–14, Atlanta, Georgia 30329. Telephone (404) 498–6482, Email: *ACDirector@cdc.gov.* The deadline to register for in-person attendance at this meeting is October 6, 2016. To register, please send an email to *ACDirector@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–20760 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee on Breast Cancer in Young Women (ACBCYW)

The CDC is soliciting nominations for membership on the ACBCYW. The Committee provides advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; and the Director, CDC, regarding the formative research, development, implementation and evaluation of evidence-based activities designed to prevent breast cancer (particularly among those at heightened risk) and promote the early detection and support of young women who develop the disease. The advice provided by the Committee will assist in ensuring scientific quality, timeliness, utility, and dissemination of credible appropriate messages and resource materials.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. The Secretary, HHS, acting through the Director, CDC, shall appoint to the advisory committee nominees with expertise in breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women. Members may be invited to serve for up to four years. The next cycle of selection of candidates will begin in the Fall of 2016, for selection of potential nominees to replace members whose terms will end on November 30, 2017.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives (*http://www.cdc.gov/maso/facm/facmacbcyw.html*).

The U.S. Department of Health and Human Services policy stipulates that Committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACBCYW membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection.

Candidates should submit the following items. The deadline for receipt of materials for the 2017 term is October 7, 2016:

- Current curriculum vitae or resume, including complete contact information (name, affiliation, mailing address, telephone numbers, fax number, email address);
- A 150 word biography for the nominee;
- At least one letter of recommendation from a person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS.

Electronic submission: You may submit nominations, including attachments, electronically to *acbcyw@cdc.gov*.

Regular, Express or Overnight Mail: Written nominations may be submitted to the following addressee only: Temeika L. Fairley, Ph.D., c/o ACBCYW Designated Federal Officer, CDC, 4770 Buford Highway NE., Mailstop F–76, Atlanta, Georgia 30341.

Telephone and facsimile submissions cannot be accepted. Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2016–20759 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16ARO]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Data Collection for CDC Fellowship Programs—New—Division of Scientific Education and Professional Development (DSEPD), Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's mission is to protect America from health, safety, and security threats, both foreign and in the U.S. To ensure a competent, sustainable, and empowered public health workforce prepared to meet these challenges, CDC plays a key role in developing, implementing, and managing a number of fellowship programs. A *fellowship* is defined as a training or work experience lasting at least 1 month and consisting of primarily experiential (*i.e.*, on-the-job) learning, in which the trainee has a designated mentor or supervisor. CDC fellowships are intended to develop public health professionals, enhance the public health workforce, and strengthen collaborations with partners in public health and healthcare organizations, academia, and other stakeholders in governmental and non-governmental organizations. Assessing fellowship activities is essential to ensure that the public health workforce is equipped to promote and protect the public's health.

CDC requests a 3-year approval of a generic clearance to collect data about its fellowship programs, as they relate to public health workforce development. Data collections will allow for ongoing, collaborative, and actionable communications between CDC fellowship programs and stakeholders (*e.g.*, fellows, supervisors/mentors, alumni). These collections might include short surveys, interviews, and focus groups. Intended use of the resulting information is to

- inform planning, implementation, and continuous quality improvement of fellowship activities and services;
- improve efficiencies in the delivery of fellowship activities and services; and
- determine to what extent fellowship activities and services are achieving established goals.

Collection and use of information about CDC fellowship activities will help ensure effective, efficient, and satisfying experiences among fellowship program participants and stakeholders.

CDC estimates that annually, a given fellowship program will conduct one query each with one of the three respondent groups: Fellowship applicants or fellows; mentors, supervisors, or employers; and alumni. The total annualized burden hours of 2,957 was determined as depicted in the following table. There are no costs to Respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Total number of responses per respondent	Average burden per response (in hours)
Applicant or fellow	Fellowship Data Collection Instrument	1,848	1	30/60
Mentor, supervisor, or employer	Fellowship Data Collection Instrument	370	1	30/60
Alumni	Fellowship Data Collection Instrument	3,696	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20829 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16APN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Vector-Borne Diseases (DVBD) and other programs working on tickborne diseases (TBDs) is requesting a three year approval for a generic clearance to conduct TBD prevention studies to include knowledge, attitudes, and practices (KAP) surveys regarding ticks and tickborne diseases (TBDs) among residents and businesses offering pest control services in Lyme disease endemic areas of the United States. The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions. A "Generic" clearance will provide the flexibility to conduct multiple surveys on the same topic (TBDs), but regarding different prevention methods, objectives, or target audiences.

TBDs are a substantial and growing public health problem in the United States. From 2009–2014, over 200,000 cases of TBDs were reported to CDC, including cases of anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, Rocky Mountain spotted fever, and tularemia. Lyme disease leads in number of cases with over 33,000 confirmed and probable cases reported in 2014. In addition, several novel tickborne pathogens have recently been found to cause human disease in the United States. Factors driving the emergence of TBDs are not well defined and current prevention methods have been insufficient to curb the increase in cases. Data is lacking on how often certain prevention measures are used by individuals at risk as well as what the barriers to using certain prevention measures are.

The primary target population for these data collections are individuals and their household members who are at risk for TBDs associated with *I. scapularis* ticks and who may be exposed to these ticks residentially, recreationally, and/or occupationally. The secondary target population includes owners and employees of businesses offering pest control services to residents in areas where *I. scapularis* ticks transmit diseases to humans. Specifically, these target populations include those residing or working in the 14 highest incidence states for Lyme disease (CT, DE, ME, MD, MA, MN, NH, NJ, NY, PA, RI, VT, VA, WI).

We anticipate conducting one to two surveys per year, for a maximum of six surveys conducted over a three year period. Depending on the survey, we aim to enroll 500–10,000 participants per study. It is expected that we will need to target recruitment to about twice as many people as we intend to enroll. Surveys may be conducted daily, weekly, monthly, or bi-monthly per participant for a defined period of time (whether by phone or web survey), depending on the survey or study. The surveys will range in duration from approximately 5–30 minutes. Each participant may be surveyed 1–64 times in one year; this variance is due to differences in the type of information collected for a given survey. Specific burden estimates for each study and each information collection instrument will be provided with each individual project submission for OMB review. The maximum estimated, annualized burden hours are 98,830 hours. There is no cost to respondents other than their time.

Insights gained from KAP surveys will aid in prioritizing which prevention methods should be evaluated in future randomized, controlled trials and ultimately help target promotion of proven prevention methods that could yield substantial reductions in TBD incidence.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
General public, individuals or households	Screening instrument	20,000	1	15/60
	Consent form	10,000	1	20/60
	Introductory Surveys	10,000	1	30/60
	Monthly surveys	10,000	12	15/60
	Final surveys	10,000	1	30/60
	Daily surveys	10,000	60	5/60
Pest Control Operators	PCO Survey	1,000	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20762 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16ACN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Workplace Health Promotion Resource Center—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC plans to conduct information collection needed to design and implement a new CDC Workplace Health Promotion Resource Center (Resource Center), where relevant resources will be vetted, catalogued, compiled, and made publicly available to employers and other key stakeholders. Through the Resource Center, CDC will also provide technical assistance (TA) to employers, with the ultimate aim of improving population health, reducing health care utilization, and improving the productivity of employees. These activities are consistent with CDC's role as the primary Federal agency for protecting health and promoting quality of life through the prevention and control of disease, injury, and disability.

Public and private employers can play a significant role in improving the health and well-being of American workers, but often lack the know-how to do so effectively. CDC plays an important role in providing the tools, resources, and technical expertise to support employers' efforts to build and sustain workplace health promotion (WHP) programs and advance healthy company cultures.

The primary goal of the Resource Center is to serve as a prominent and effective resource for employers wishing to create and sustain best-practice WHP initiatives. The project will take place over two phases. In Phase 1, CDC will conduct formative research via interviews, a web-based survey, and an environmental scan of market research reports and other related documents to obtain direct input on stakeholder needs for the Resource Center. This information will be used to design and create the content and layout of the Resource Center. In Phase 2, CDC will use a consumer satisfaction survey, a TA feedback survey, and a TA Pilot assessment to assess satisfaction with the Resource Center and with the TA support mechanisms designed to support users of the Resource Center. This information will be used to refine and improve the design and content of the Resource Center and TA. The target audience includes employers, business groups, workplace health vendors and consultants, health departments, journalists, and researchers.

OMB approval is requested for three years. The first and second year will be dedicated to the Phase 1 formative work and Resource Center development. In years 2 and 3 (Phase 2), the Resource Center will be launched and technical assistance provided. An evaluation of customer satisfaction with the Resource Center, IC and technical assistance will be conducted. CDC estimates that a total 850 employers and stakeholders will participate in surveys and interviews associated with Phase 1 and that approximately 850 employers and stakeholders will complete the customer satisfaction survey and an additional 3–5 states will participate in the technical assistance pilot. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 138.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
Employers	Needs and Interests Interview Guide for Employers.	3	1	1
Business Groups, Vendors, Consultants, and Public Health Organizations.	Needs and Interests Interview Guide for Business Groups, Vendors, Consultants, and Public Health Organizations.	9	1	1
Journalists	Needs and Interests Interview Guide for Journalists.	1	1	45/60
Researchers	Needs and Interests Interview Guide for the Research Community.	3	1	45/60
Key Stakeholders and Users of the Resource Center (All Groups).	Stakeholder Needs and Interests Market Survey.	267	1	20/60
	Consumer Satisfaction Survey	283	1	2/60
Technical Assistance (TA) Participants	TA Feedback Survey	33	5	5/60
	TA Pilot Assessment	33	1	20/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20830 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16AHI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community-Based Organization Outcome Monitoring Projects for CBO HIV Prevention Services Clients—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Community-based Organization (CBO) Outcome Monitoring Projects for CBO–HPS Clients (CBO–OMP) will collect information on HIV prevention services provided to HIV-positive clients and high-risk HIV-negative clients. CBOs are funded through CBO–HPS to provide HIV prevention activities.

CBOs play an essential role in reaching persons at high risk of transmitting and acquiring HIV infection. Through CBO–HPS, CDC funds 90 CBOs to provide comprehensive HIV prevention services to HIV-positive persons and high-risk HIV-negative persons. However, the CBO–HPS awardees are not required to monitor or report on critical outcomes such as whether HIV-positive persons who are linked to HIV medical care were retained in care or prescribed ART, and whether high-risk HIV-negative persons who were referred to PrEP initiated its use. Also, CBO–HPS CBOs are not required to collect and report data about clients' perceived barriers to accessing HIV prevention services.

The goal of these projects is to fund a subset of CBO–HPS awardees to collect and report data to CDC about the utilization and outcomes of the HIV prevention and support services. This will increase understanding of HIV prevention and support services received by CBO–HPS clients, the outcomes of these services, and successes and challenges related to service provision and utilization. Awardees will collect and report data that are aligned with the Updated NHAS indicators. These projects will help address the Updated NHAS's call for developing improved mechanisms for monitoring and reporting results of efforts to reduce new HIV infections and improve health outcomes to chart progress over time at both the local and national levels.

The purpose of CBO–OMP is to collect data to monitor critical HIV prevention service outcomes of CBO–HPS clients over time. These data will increase understanding of (a) HIV prevention and support services received by CBO–HPS clients, (b) the outcomes of these services, (c) and successes and challenges related to service provision and utilization. Ultimately, these data will improve performance of CBO–HPS CBOs and contribute to reducing HIV infections, increasing access to care, and improving health outcomes for clients.

There are no additional costs to respondents other than their time. The total estimated annual burden hours are 1,266.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden response (hours)
General public	Screener Participant Interview Category 1	175	1	3/60
Facility office staff	Medical records abstraction Category 1	150	3	3/60
CBO–HPS grantees	CBO–HPS Referrals Category 1	150	3	3/60
General public	Baseline Interview Category 1	150	1	40/60
General public	3,6,9, and 15 Month Follow-up Interview Category 1	150	4	30/60
General public	Screener Focus Group Category 1	150	1	3/60
General public	Focus Group Questionnaire Category 1	90	1	2/60
General public	Focus Group Category 1	90	1	1.5
CBO–HPS grantees	Staff Interview Category 1	30	1	2.5
CBO–OMP CBOs	Data submission Category 1 and 2	18	12	10/60
General public	Screener Participant Interview Category 2	225	1	3/60
Facility office staff	Medical records abstraction Category 2	210	2	3/60
CBO–HPS grantees	CBO–HPS Referrals Category 2	210	2	3/60
General public	Baseline Interview Category 2	210	1	40/60
General public	3,6, and 9 Month Follow-up Interview Category 2	210	3	30/60
General public	Screener Focus group Category 2	30	1	3/60
General public	Focus Group Questionnaire Category 2	18	1	2/60
General public	Focus Group Category 2	18	1	1.5
CBO–HPS grantees	Staff Interview Category 2	6	1	2.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–20831 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Multi-Agency Informational Meeting Concerning Compliance With the Federal Select Agent Program; Public Webcast

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public webcast.

SUMMARY: The HHS/CDC's Division of Select Agents and Toxins (DSAT) and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, Agriculture Select Agent Services (AgSAS) are jointly charged with the oversight of the possession, use and transfer of biological agents and toxins that have the potential to pose a severe threat to public, animal or plant health or to animal or plant products (select agents and toxins). This joint effort constitutes the Federal Select Agent Program. The purpose of the webcast is to provide guidance related to the Federal Select Agent Program for interested individuals.

DATES: The webcast will be held on Wednesday, November 9, 2016 from 12 p.m. to 4 p.m. EST. All who wish to join the webcast should register by November 4, 2016. Registration instructions can be found on the Web site *http://www.selectagents.gov.*

ADDRESSES: The webcast will be broadcast from CDC, 1600 Clifton Road NE., Atlanta, GA 30329. This will only be produced as a webcast; therefore, no accommodations will be provided for in-person participation.

FOR FURTHER INFORMATION CONTACT: CDC: Ms. Diane Martin, DSAT, Office of Public Health Preparedness and Response, CDC, 1600 Clifton Road NE., MS A–46, Atlanta, GA 30329; phone: 404–718–2000; email: *lrsat@cdc.gov.*

APHIS: Dr. Keith Wiggins, AgSAS, APHIS, 4700 River Road, Unit 2, Riverdale, MD 20737; phone: 301–851–3300 (option 3); email: *AgSAS@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The public webcast is an opportunity for the affected community (*i.e.,* registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information concerning biosafety, security and incident response issues related to the Federal Select Agent Program.

Representatives from the Federal Select Agent Program will be present during the webcast to address questions and concerns from the web participants.

Individuals who want to participate in the webcast should complete their registration online by November 4, 2016. The registration instructions are located on this Web site: *http://www.selectagents.gov.*

Dated: August 24, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–20710 Filed 8–29–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity, Comment Request Proposed Project

Title: State Abstinence Education Program

OMB No.: 0970–0381

Description: Section 215 of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) 42 U.S.C. 1305 extended funding through FY 2017 for the State Abstinence Program.

The Family and Youth Services Bureau (FYSB) is accepting applications from States and Territories for the development and implementation of the State Abstinence Program. The purpose of this program is to support decisions to abstain from sexual activity by providing abstinence programming as defined by Section 510(b) of the Social Security Act (42 U.S.C. 710(b)) with a focus on those groups that are most likely to bear children out-of-wedlock, such as youth in or aging out of foster care and other vulnerable populations.

States are encouraged to develop flexible, medically accurate and effective abstinence-based plans responsive to their specific needs and inclusive of vulnerable populations. These plans must provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock. An expected outcome for all programs is to promote abstinence from sexual activity. OMB approval is requested to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees:

State Plan

Performance Progress Report

Respondents: 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	59	1	40	2,360
Performance Progress Reports	59	2	30	3,540
Estimated Total Annual Burden Hours:				5,900

In compliance with the requirements of section 506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C St. SW., Washington, DC 20201, Attn: Reports Clearance Officer, email address: *infocollection@acf.hhs.gov.* All request should be identified by the title of the information collection.

The Department specifically request comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agencies estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–20747 Filed 8–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity, Comment Request

Proposed Project

Title: State Abstinence Education Program.

OMB No.: 0970–0381.

Description: Section 215 of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) 42 U.S.C. 1305 extended funding through FY 2017 for the State Abstinence Program.

The Family and Youth Services Bureau (FYSB) is accepting applications from States and Territories for the development and implementation of the State Abstinence Program. The purpose of this program is to support decisions to abstain from sexual activity by providing abstinence programming as defined by Section 510(b) of the Social Security Act (42 U.S.C. 710(b)) with a focus on those groups that are most likely to bear children out-of-wedlock, such as youth in or aging out of foster care and other vulnerable populations.

States are encouraged to develop flexible, medically accurate and effective abstinence-based plans responsive to their specific needs and inclusive of vulnerable populations. These plans must provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock. An expected outcome for all programs is to promote abstinence from sexual activity.

OMB approval is requested to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following documents from applicants and awardees:

State Plan.

Performance Progress Report.

Respondents: 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan	59	1	40	2,360
Performance Progress Reports	59	2	30	3,540

Estimated Total Annual Burden Hours: 5,900.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 l'Enfant Promenade, SW., Washington, DC 20447, Attn: Reports Clearance Officer, email address: *infocollection@acf.hhs.gov.* All request should be identified by the title of the information collection.

The Department specifically request comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility: (b) the accuracy of the agencies estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–20729 Filed 8–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Bioequivalence Recommendations for Risperidone; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry on generic risperidone injection, entitled "Bioequivalence Recommendations for Risperidone." The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for risperidone injection.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for "Bioequivalence Recommendations for Risperidone; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," will be publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Xiaoqiu Tang, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4730, Silver Spring, MD 20993–0002, 301–796–5850.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process to develop and disseminate product-specific BE recommendations and to provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for generic risperidone injection.

FDA initially approved new drug application 021346 for RISPERDAL CONSTA (risperidone) LONG-ACTING INJECTION in October 2003. Currently, there are no approved ANDAs for this product. In February 2010, FDA issued a draft guidance for industry on BE recommendations for generic risperidone injection. In August 2013 and May 2015, we issued revised draft guidances on the same subject. We are now issuing another revision of the draft guidance for industry on BE recommendations for generic risperidone injection (Draft Guidance on Risperidone).

In February 2011, Johnson & Johnson Pharmaceutical Research and Development, LLC, manufacturer of RISPERDAL CONSTA LONG-ACTING INJECTION, the reference listed drug, submitted a citizen petition requesting that FDA require that any ANDA referencing RISPERDAL CONSTA LONG-ACTING INJECTION meet certain requirements, including requirements related to demonstrating BE (Docket No. FDA–2011–P–0086). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the revised draft BE recommendations in responding to the petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the design of BE studies to support ANDAs for risperidone injection. It does not establish any rights for any person is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20778 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related

Biological Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on November 16, 2016, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD, 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* For those unable to attend in person, the meeting will also be Webcast and will be available at the following link: *https://collaboration.fda.gov/vrbac1116/.*

FOR FURTHER INFORMATION CONTACT: Sujata Vijh or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, at 240–402–7107, *sujata.vijh@fda.hhs.gov* and 240–402–8072, *rosanna.harvey@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 16, 2016, the committee will meet in open session to discuss and make recommendations on the safety and efficacy of a Hepatitis B Vaccine manufactured by Dynavax.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 1, 2016. Oral presentations from the public will be scheduled between approximately 12:15 p.m. to 1:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 24, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sujata Vijh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20763 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

FDA Small Business and Industry Assistance Regulatory Education for Industry Fall Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of conference.

SUMMARY: The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research (CDER) and the Center for Devices and Radiological Health (CDRH) are sponsoring a 2 day conference entitled "FDA Small Business and Industry Assistance Regulatory Education for Industry (REdI) Fall Conference." The goal of this conference is to provide direct, relevant, and helpful information on the key aspects of drug and device regulations. Our primary audience is that of small manufacturers of drug and/or device medical products who want to learn about how FDA approaches the regulation of drugs and devices. However, anyone involved in the pharmaceutical and/device industry may attend.

DATES: The public conference will be held on September 27 and 28, 2016, from 8:15 a.m. to 4:15 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration information.

ADDRESSES: The public conference will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Cypress and Magnolia Ballrooms (4th floor), Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brenda Stodart, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6707, *cdersbia@fda.hhs.gov;* or Elias Mallis, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7100, *DICE@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public conference entitled "FDA Small Business and Industry Assistance Regulatory Education for Industry (REdI) Fall Conference." This conference is intended to increase the drug and device industry's awareness of applicable FDA regulations. There will be an opportunity for questions and answers following each presentation.

II. Topics for Discussion at the Conference

- *CDER:* Manufacturing Process Validation; Interactions with FDA; Emerging Technology and Inspection for New Drug Applications and Biologic License Applications.
- *CDRH:* 510(k); De Novo; Design Controls; and Complaints.

Registration: There is no fee to attend the public conference. Space is limited, and registration will be on a first-come, first-served basis. To register, please complete registration at: *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/SmallBusinessAssistance/ucm514324.htm.*

If you need special accommodations due to disability, please contact *info@sbiaevents.com* at least 7 days in advance.

Streaming Webcast of the Conference: This public conference will also be Webcast. Persons interested in viewing the Webcast must register to receive a confirmation email with the Webcast link.

Transcripts: Transcripts will not be available.

Dated: August 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20764 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1427]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our regulations mandating the application of hazard analysis and critical control point (HACCP) principles to the processing of fruit and vegetable juices.

DATES: Submit either electronic or written comments on the collection of information by October 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–1427 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice—21 CFR Part 120 OMB Control Number 0910–0466—Extension

FDA's regulations in part 120 (21 CFR part 120) mandate the application of HACCP procedures to the processing of fruit and vegetable juices. HACCP is a preventative system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(4)). Under section 402(a)(4) of the FD&C Act, a food is adulterated if it is prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or rendered injurious to health. The Agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State, territory, or possession to another, or from outside the United States into this country. Under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), FDA is authorized to issue regulations for the efficient enforcement of that act.

Under HACCP, processors of fruit and vegetable juices establish and follow a preplanned sequence of operations and observations (the HACCP plan) designed to avoid or eliminate one or more specific food hazards, and thereby ensure that their products are safe, wholesome, and not adulterated; in compliance with section 402 of the FD&C Act. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
120.6(c) and 120.12(a)(1) and (b)—Require written monitoring and correction records for Sanitation Standard Operating Procedures.	1,875	365	684,375	0.1 (6 minutes)	68,438
120.7, 120.10(a), and 120.12(a)(2), (b) and (c)—Require written hazard analysis of food hazards.	2,300	1.1	2,530	20	50,600
120.8(a) and 20.12(a)(3), (b), and (c)—Require written HACCP plan.	1,560	1.1	1,716	60	102,960
120.8(b)(7) and 120.12(a)(4)(i) and (b)—Require a recordkeeping system that documents monitoring of the critical control points and other measurements as prescribed in the HACCP plan.	1,450	14,600	21,170,000	0.01 (1 minute)	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)—Require that all corrective actions taken in response to a deviation from a critical limit be documented.	1,840	12	22,080	0.1 (6 minutes)	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12 (a)(5) and (b)—Require records showing verification activities associated with the HACCP system.	1,840	52	95,680	0.1 (6 minutes)	9,568
120.11(b) and 120.12(a)(5) and (b)—Require records showing validation activities associated with the HACCP system.	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)—Require documentation of revalidation of the hazard analysis upon any changes that might affect the original hazard analysis (applies when a firm does not have a HACCP plan because the original hazard analysis did not reveal hazards likely to occur).	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d) and 120.12(b)—Require that juice importers have written procedures to ensure that the juice is processed in accordance with our regulations in part 120.	308	1	308	4	1,232
Total					461,426

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 provides our estimate of the total annual recordkeeping burden of our regulations in part 120. We base our estimate of the average burden per recordkeeping on our experience with the application of HACCP principles in food processing. We base our estimate of the number of recordkeepers on our estimate of the total number of juice manufacturing plants affected by the regulations (plants identified in our official establishment inventory plus very small apple juice and very small orange juice manufacturers). These estimates assume that every processor will prepare sanitary standard operating procedures and an HACCP plan and maintain the associated monitoring records, and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have an HACCP plan under these regulations.

Dated: August 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20779 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0199]

Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled "Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices." This guidance describes the Agency's intent not to enforce the prohibition against providing National Health Related Item Code (NHRIC) or National Drug Code (NDC) numbers on device labels and device packages, with respect to finished devices that are manufactured and labeled prior to September 24, 2021. In addition, this guidance describes the Agency's intent to continue considering requests for continued use of FDA labeler codes under a system for the issuance of unique device identifiers (UDIs) that are submitted before September 24, 2021.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0199 for "Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices; Guidance for Industry and Food and Drug Administration Staff." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: UDI Regulatory Policy Support, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3303, Silver Spring, MD 20993–0002, 301–796–5995, *GUDIDSupport@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 3, 2016, FDA announced the availability of "Draft Guidance for Industry and Food and Drug Administration Staff: Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices" (81 FR 5760) (the "Draft Guidance"). The Draft Guidance described FDA's intent not to enforce before September 24, 2021, the prohibition against providing NHRIC and NDC numbers on device labels and device packages of certain devices that are manufactured and labeled prior to September 24, 2018. Interested persons were invited to comment by April 4, 2016.

FDA received 13 sets of comments on the Draft Guidance, the majority of which commented that stakeholders, including supply chain participants, pharmacies, and payers, would not be able to complete the work to transition away from use of NHRIC and NDC numbers by September 24, 2018. Some commenters also expressed concern that after September 24, 2021, retailers and pharmacies would need to send some devices with shelf lives exceeding 3 years, and with NHRIC or NDC numbers on their labels or device packages, back to the device labelers.

FDA has revised the guidance to reflect the Agency's intent not to enforce the prohibition against providing NHRIC and NDC numbers on device labels and device packages, with respect to finished devices that are manufactured and labeled prior to September 24, 2021. We expect the UDI labeling requirements will be fully implemented by September 24, 2021. We also believe additional time is appropriate for stakeholders to adopt medical device reimbursement, supply chain, and procurement systems, which do not depend on having an NHRIC or NDC number on the device label.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices". It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Enforcement Policy on National Health Related Item Code and National Drug Code Numbers Assigned to Devices" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUD1500044 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801, subparts A and B have been approved under OMB control number 0910–0720.

Dated: August 24, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20766 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Antimicrobial Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on November 4, 2016, from 8:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug applications 209006 and 209007, solithromycin capsules and solithromycin for injection, sponsored by Cempra Pharmaceuticals, Inc., respectively, for the proposed indication of treatment of community-acquired bacterial pneumonia.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Lauren D. Tesh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20765 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0055]

Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry; Extension of Comment Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment periods for the Draft Guidance entitled, "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods" that appeared in the **Federal Register** of June 2, 2016. In the notice, we requested comments on developing the sodium targets and for implementation of the guidance document. We are taking this action in response to requests to extend the two comment periods to allow interested persons additional time to submit comments.

DATES: We are extending the comment periods on the draft guidance published June 2, 2016 (81 FR 35363). Submit either electronic or written comments on Issues 1 through 4 in section IV of the notice of availability that published on June 2, 2016, by October 17, 2016. Submit either electronic or written comments on Issues 5 through 8 in section IV of the notice of availability that published on June 2, 2016, by December 2, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–0055 for "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kasey Heintz, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1376.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 2, 2016 (81 FR 35363), we published a notice announcing the availability of a draft guidance entitled, "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods." Section IV of the notice, "Issues for Consideration," listed eight specific questions (or "issues") and provided two comment periods for the submission of comments pertaining to these issues (81 FR 35363 at 35366). The comment period for Issues related primarily to short-term goals (Issues 1 through 4) was scheduled to end on August 31, 2016, and the comment period for issues related primarily to long-term goals (Issues 5 through 8) was scheduled to end on October 31, 2016. Comments on Issues 1 through 8 will inform our final guidance on the voluntary sodium reduction goals.

We received requests for 90- and 30-day extensions of these comment periods, respectively. In general, the requests expressed concern that the current 90- and 150-day comment periods do not allow sufficient time to develop a meaningful or thoughtful response to the draft guidance. Some requests mentioned a need for companies to review the sodium concentration in their products, to consider what technology might be needed to meet the sodium reduction goals, and to address FDA requirements. The requested extensions would result in a 180-day comment period for all eight Issues for Consideration. We also received comments opposed to any extensions of the comment period related to the short-term goals. These comments expressed their view that the initial comment period provided sufficient time for stakeholders to review the draft guidance and to contribute informed comments and that it is important for FDA to move forward in finalizing the short-term goals for public health reasons.

We considered the requests and are extending the comment periods for the draft guidance as follows: For Issues 1 through 4, we are extending the comment period until October 17, 2016, and for Issues 5 through 8 we are extending the comment period until December 2, 2016. We believe that these extensions allow adequate time for interested persons to submit comments without significantly delaying finalizing the guidance.

Dated: August 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20780 Filed 8–29–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The Stem Cell Therapeutic Outcomes Database

AGENCY: Health Resources and Services Administration, HHS

ACTION: Notice

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than September 29, 2016.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The Stem Cell Therapeutic Outcomes Database OMB No. 0915–0310—Revision.

Abstract: The Stem Cell Therapeutic and Research Act of 2005, Public Law (P.L.) 109–129, as amended by the Stem Cell Therapeutic and Research Reauthorization Act of 2015, P.L. 114–104 (the Act), provides for the collection and maintenance of human blood stem cells for the treatment of patients and research. HRSA's Healthcare Systems Bureau established the Stem Cell Therapeutic Outcomes Database. Operation of this database necessitates certain record keeping and reporting requirements to perform the functions related to hematopoietic stem cell transplantation under contract to the U.S. Department of Health and Human Services (HHS). The Act requires the Secretary to contract for the establishment and maintenance of information related to patients who received stem cell therapeutic products and to do so using a standardized, electronic format. Data is collected from transplant centers by the Center for International Blood and Marrow Transplant Research and is used for ongoing analysis of transplant outcomes. Post-Transplant Essential Data (TED) forms are being revised in this submission. The portion of the Product Form related to confirmation of human leukocyte antigen (HLA) typing has minor changes to the identification and date fields to allow this form to more flexibly capture HLA typing data for expanding indications of cellular therapy. The Pre-TED form remains unchanged from the previously approved OMB submission.

The increase in burden is due to an increase in the annual number of transplants and increasing survivorship after transplantation.

Need and Proposed Use of the Information: HRSA uses the information to carry out its statutory responsibilities. Information is needed to monitor the clinical status of transplantation and provide the Secretary of HHS with an annual report of transplant center specific survival data.

Likely Respondents: Transplant Centers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes (1) the time needed to review instructions; (2) to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information; (3) processing and maintaining information; (4) disclosing and providing information; (5) training personnel to be able to respond to a collection of information; (6) searching data sources; (7) completing and reviewing the collection of information; and (8) transmitting or otherwise disclosing the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Baseline Pre-TED (Transplant Essential Data)	200	44	8,800	1.15	10,120
Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts)	200	33	6,600	1	6,600
100-Day Post-TED	200	44	8,800	1.25	11,000
6-Month Post-TED	200	36	7,200	1.15	8,280
12-Month Post-TED	200	32	6,400	1.15	7,360
Annual Post-TED	200	110	22,000	1.15	25,300
* Total	200		59,800		68,660

* The Total of 200 is the number of centers completing the form. The same group of 200 centers completes each of the forms.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–20758 Filed 8–29–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Andrew R. Cullinane, Ph.D., National Institutes of Health: Based on Respondent's admission, an assessment conducted by the National Institutes of Health (NIH), and analysis conducted by ORI in its oversight review, ORI found that Dr. Andrew R. Cullinane, former postdoctoral fellow, Medical Genetics Branch, National Human Genome Research Institute (NHGRI), NIH, engaged in research misconduct in research supported by NHGRI, NIH.

ORI found that Respondent engaged in research misconduct by reporting falsified and/or fabricated data in the following two (2) publications and one (1) submitted manuscript:

- *Am. J. Hum. Genet.* 88(6):778–787, 2011 (hereafter referred to as "Paper 1")
- *Neurology* 86(14):1320–1328, 2016 (hereafter referred to as "Paper 2")
- "*RAB11FIP1,* Mutated in HPS–10, Interacts with BLOC–1 to Mitigate Recycling of Melanogenic Proteins." Submitted for publication to *The Journal of Clinical Investigations, Cell, Nature Biology, Molecular Cell,* and *Nature Genetics* (hereafter referred to as "Manuscript 1")

ORI found that Respondent knowingly falsified and/or fabricated data and related images by alteration and/or reuse and/or relabeling of experimental data. Specifically:

- in Paper 1, Respondent falsified and/or fabricated the results in Figure 3C by using the same gel images to represent expression of PLDN in fibroblasts and melanocytes
- in Paper 2, Respondent falsified and/or fabricated the results in Figure 2A by erasure of a band in the blot image for LYST/CHD–4 that was present in the original data
- in Manuscript 1, Respondent falsified and/or fabricated the results in Western blot data by reuse and relabeling, duplication, and/or manipulation in Figures 2B, 2D, 2E, 3A–C, 4C, 4E, 4G, 5B, 6A–C, 7A, 7D, 7G, 7J, and Supplemental Figure 3, and Respondent falsified and/or fabricated the results by reuse and relabeling of centrifuge tubes to represent different experiments in Figures 1D, 7C, 7F, 7I, 7L, and Supplemental Figure 2

Dr. Cullinane has entered into a Voluntary Settlement Agreement with ORI and NIH, in which he voluntarily agreed:

(1) To have his research supervised for a period of three (3) years beginning on July 22, 2016; Respondent agreed to ensure that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, the institution employing him must submit a plan for supervision of his duties to ORI for approval. The plan for supervision must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agreed that he will not participate in any PHS-supported research until a plan for supervision is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that for a period of three (3) years beginning on July 22, 2016, any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on July 22, 2016; and

(4) as a condition of the Agreement, Respondent agreed to the retraction or correction of:

- *Am. J. Hum. Genet.* 88(6):778–787, 2011

- *Neurology* 86(14):1320–1328, 2016

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Kathryn M. Partin,

Director, Office of Research Integrity.

[FR Doc. 2016–20834 Filed 8–29–16; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on September 12, 2016. The subject of the meeting will be the "Diabetes and Neurocognition." The meeting is open to the public.

DATES: The meeting will be held on September 12, 2016; from 1:00 p.m. to 4:30 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held in the Democracy 2 Building at 6707 Democracy Blvd., Bethesda, MD, in Conference Room 7050.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, see the DMICC Web site, *www.diabetescommittee.gov,* or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The September 12, 2016 DMICC meeting will focus on the Diabetes and Neurocognition.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, *www.diabetescommittee.gov.*

Dated: August 24, 2016.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2016–20824 Filed 8–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: September 29–30, 2016.

Time: 4:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kimberly Firth, Ph.D., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7702, *kimberly.firth@nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: September 29–30, 2016.

Time: 4:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, Ph.D., DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 24, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20727 Filed 8–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: September 14, 2016.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC, 6001 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 24, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20728 Filed 8–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee. NIA–B Committee Meeting.

Date: September 29–30, 2016.

Time: 4:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 24, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20726 Filed 8–29–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0031]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security

ACTION: Notice of Federal Advisory Committee meeting; correction.

SUMMARY: The Coast Guard published a notice on July 29, 2016, regarding meetings of the Chemical Transportation Advisory Committee. The meetings will take place on September 27, 28, and 29, 2016, in Washington, DC. The notice contained a typographical error regarding the date of the full committee meeting, which will take place on Thursday, September 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Keffler, Alternate Designated Federal Official of the Chemical Transportation Advisory Committee, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1424, fax 202–372–8380, or *patrick.a.keffler@uscg.mil.*

Correction

In the **Federal Register** of July 29, 2016, in FR Doc. 2016–18035, on page 49999, in the first column, correct the **DATES** caption to read:

DATES: Subcommittees will meet on Tuesday, September 27, 2016, from 9 a.m. to 5 p.m. and on Wednesday, September 28, 2016, from 9: a.m. to 5 p.m. The full committee will meet on Thursday, September 29, 2016, from 9 a.m. to 5 p.m. (All times are Eastern Standard Time). Please note that these meetings may close early if the Committee has completed its business.

Dated: August 25, 2016.

Rebecca Orban,

Acting Chief, Office of Regulations and Administrative Law.

[FR Doc. 2016–20771 Filed 8–29–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice Announcing the Automated Commercial Environment (ACE) as the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Electronic Drawback and Duty Deferral Entry and Entry Summary Filings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that the Automated Commercial Environment (ACE) will be the sole electronic data interchange (EDI) system authorized by the Commissioner of U.S. Customs and Border Protection (CBP) for processing electronic drawback and duty deferral entry and entry summary filings. This document also announces that the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for purposes of processing the electronic filings specified in this notice. This notice also announces a name change for the ACE filing code for duty deferral and the creation of a new ACE filing code for all electronic drawback filings, replacing the six distinct drawback codes previously filed in ACS.

DATES: *Effective October 1, 2016:* ACE will be the sole CBP-authorized EDI system for processing electronic entry and entry summary filings for certain entry types, and ACS will no longer be a CBP-authorized EDI system for purposes of processing the electronic filings specified in this notice.

FOR FURTHER INFORMATION CONTACT: Questions related to this notice may be emailed to *ASKACE@cbp.dhs.gov* with the subject line identifier reading "ACS to ACE October 1, 2016 transition".

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), establishes the requirement for importers of record to make entry for merchandise to be imported into the customs territory of the United States. Customs entry information is used by U.S. Customs and Border Protection (CBP) and Partner Government Agencies (PGAs) to determine whether merchandise may be released from CBP custody. Importers of record are also obligated to complete the entry by filing an entry summary declaring the value, classification, rate of duty applicable to the merchandise and such other information as is necessary for CBP to properly assess duties, collect accurate statistics and determine whether any other applicable requirement of law is met.

The customs entry requirements were amended by Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act, or Mod Act. In particular, section 637 of the Mod Act amended section 484(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1484(a)(1)(A)) by revising the requirement to make and complete customs entry by submitting documentation to CBP to allow, in the alternative, the electronic transmission of such entry information pursuant to a CBP-authorized electronic data interchange (EDI) system. CBP created the Automated Commercial System (ACS) to track, control, and process all commercial goods imported into the United States. CBP established the specific requirements and procedures for the electronic filing of entry and entry summary data for imported merchandise through the Automated Broker Interface (ABI) to ACS.

Transition From ACS to ACE

In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Mod Act and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed the Automated Commercial Environment (ACE) to eventually replace ACS as the CBP-authorized Electronic Data Interchange (EDI) system. Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE.

On February 19, 2014, President Obama issued Executive Order (E.O.) 13659, *Streamlining the Export/Import Process for America's Businesses,* in order to reduce supply chain barriers to commerce while continuing to protect our national security, public health and safety, the environment, and natural resources. *See* 79 FR 10657 (February 25, 2014). Pursuant to E.O. 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize ITDS and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications).

On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first two phases of the transition were announced in a **Federal Register** notice on February 29, 2016. *See* 81 FR 10264 (February 29, 2016). The third phase of the transition was announced in a **Federal Register** notice on May 16, 2016. *See* 81 FR 30320 (May 16, 2016). The fourth phase of the transition was announced in a **Federal Register** notice on May 23, 2016. *See* 81 FR 32339 (May 23, 2016). This notice announces the fifth phase of the transition.

In this phase, CBP will decommission ACS for all drawback and duty deferral filings. Additionally, CBP is removing the reference to NAFTA from the name of the ACE filing code 08 for duty deferral and is announcing a new ACE filing code 47 for drawback, which will replace the following decommissioned ACS filing codes:

- 41—Direct Identification Manufacturing Drawback
- 42—Direct Identification Unused Merchandise Drawback
- 43—Rejected Merchandise Drawback
- 44—Substitution Manufacturer Drawback
- 45—Substitution Unused Merchandise Drawback
- 46—Other Drawback

ACE as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Claims

This notice announces that, effective October 1, 2016, ACE will be the sole CBP-authorized EDI system for the electronic entry and entry summary filings listed below, for all filers. These electronic filings must be formatted for submission in ACE and will not be accepted in ACS.

- 08—Duty Deferral
- 47—Drawback

ACS as the Sole CBP-Authorized EDI System for the Processing of Certain Electronic Entry and Entry Summary Filings

Electronic entry and entry summary filings for the following entry type must continue to be filed only in ACS. CBP will publish a subsequent **Federal Register** Notice in the future when this entry and entry summary filing will be transitioned in ACE.

- 09—Reconciliation Summary

Due to Low Shipment Volume, Filings for the Following Entry Types Will Not Be Automated in Either ACS or ACE

- 04—Appraisement
- 05—Vessel—Repair
- 24—Trade Fair
- 25—Permanent Exhibition
- 26—Warehouse—Foreign Trade Zone (FTZ) (Admission)
- 33—Aircraft and Vessel Supply (For Immediate Exportation)
- 64—Barge Movement
- 65—Permit to Proceed
- 66—Baggage

Dated: August 25, 2016.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2016–20794 Filed 8–29–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0013]

Agency Information Collection Activities: Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on June 7, 2016, at 81 FR 36556, allowing for a 60-day public comment period. USCIS did receive six comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 29, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0013.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0045 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS) and aliens abroad seeking humanitarian parole, in need to apply for a travel document to lawfully enter or reenter the United States; eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 519,090 and the estimated hour burden per response is 1.9 hours; 71,665 respondents providing biometrics at 1.17 hours; and 317,773 respondents providing passport-style photographs at .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,228,986 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $155,789,790.

Dated: August 24, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–20772 Filed 8–29–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–61]

30-Day Notice of Proposed Information Collection: Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 7, 2016 at 81 FR 36580.

A. Overview of Information Collection

Title of Information Collection: Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units.

OMB Approval Number: 2502-New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: The Pay for Success (PFS) Pilot authorizes HUD to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program at select assisted multifamily housing properties. Participation in the program is voluntary. Participating applicants are required to submit application information for the purpose of putting together a proposal for evaluation. Through this application information, HUD evaluates whether applicants have met all of the requirements necessary to apply and be selected to participate in the PFS Pilot.

Respondents (i.e. affected public): Businesses or other for-profits, nonprofit organizations, and State, Local, or Tribal Government entities.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Frequency of Response: Once.

Average Hours per Response: 20.

Total Estimated Burden: 300 hours.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 23, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–20801 Filed 8–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–63]

30-Day Notice of Proposed Information Collection: Multifamily Default Status Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 29, 2016 at 81 FR 42369.

A. Overview of Information Collection

Title of Information Collection: Multifamily Default Status Report.

OMB Approval Number: 2502–0041.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–92426.

Description of the need for the information and proposed use: Mortgagees servicing FHA-insured mortgages use this information collection to notify HUD that a project owner is delinquent (15–20 days past due) or in default (30 days past due) on its mortgage payment. They also use the system to submit an election to assign a defaulted mortgage to HUD (refer to regulations at 24 CFR 207.256) by the 75th day from the date of default. To avoid assignment of mortgage, which is costly to the government, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information submitted in MDDR as an early warning mechanism. HUD field office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) potentially avoid mortgage assignments. This information is submitted electronically via the Internet.

Respondents (i.e. affected public): 50 (Mortgagees).

Estimated Number of Respondents: 50.

Estimated Number of Responses: 4533.

Frequency of Response: 91.

Average Hours per Response: 10 minutes.

Total Estimated Burden: 755 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 25, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–20798 Filed 8–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–62]

30-Day Notice of Proposed Information Collection: Ginnie Mae Multiclass Securities Program Documents Forms and Electronic Data Submissions

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection

requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: September 29, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5533. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 23, 2016 at 81 FR 40897.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae Multiclass Securities Program Documents, Forms and Electronic Data Submissions.

OMB Control Number: 2503–0030.

Form Number: None.

Type of Request: Extension.

Description of the need for information and proposed use: This information collection is required in connection with the operation of the Ginnie Mae Multiclass Securities program. Ginnie Mae's authority to guarantee multiclass instruments is contained in 306(g)(1) of the National Housing Act ("NHA") (12 U.S.C. 1721(g)(1)), which authorizes Ginnie Mae to guarantee "securities . . . based on or backed by a trust or pool composed of mortgages. Multiclass securities are backed by Ginnie Mae securities, which are backed by government insured or guaranteed mortgages. Ginnie Mae's authority to operate a Multiclass Securities program is recognized in Section 3004 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), which amended 306(g)(3) of the NHA (12 U.S.C. 1271(g)(3)) to provide Ginnie Mae with greater flexibility for the Multiclass Securities program regarding fee structure, contracting, industry consultation, and program implementation. Congress annually sets Ginnie Mae's commitment authority to guarantee mortgage-backed ("MBS") pursuant to 306(G)(2) of the NHA (12 U.S.C. 1271(g)(2)). Since the multiclass are backed by Ginnie Mae Single Class MBS, Ginnie Mae has already guaranteed the collateral for the multiclass instruments. The Ginnie Mae Multiclass Securities Program consists of Ginnie Mae Real Estate Mortgage Investment Conduit ("REMIC") securities, Stripped Mortgage-Backed Securities ("SMBS"), and Platinum securities. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae Single Class MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC, SMBS and Platinum securities.

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondant	Total annual responses	Estimated average hourly burden	Estimated annual burden hours
REMIC Securities						
Pricing Letter	Sponsor	18	8.00	144.00	0.50	72.00
Structured Term Sheet	Sponsor	18	8.00	144.00	3.00	432.00
Trust (REMIC) Agreement	Attorney for Sponsor	18	8.00	144.00	1.00	144.00
Trust Opinion	Attorney for Sponsor	18	8.00	144.00	4.00	576.00
MX Trust Agreement	Attorney for Sponsor	18	8.00	144.00	0.16	23.04
MX Trust Opinion	Attorney for Sponsor	18	8.00	144.00	4.00	576.00
RR Certificate	Attorney for Sponsor	18	8.00	144.00	0.08	11.52
Sponsor Agreement	Attorney for Sponsor	18	8.00	144.00	0.05	7.20
Table of Contents	Attorney for Sponsor	18	8.00	144.00	0.33	47.52
Issuance Statement	Attorney for Sponsor	18	8.00	144.00	0.5	72.00
Tax Opinion	Attorney for Sponsor	18	8.00	144.00	4.00	576.00
Transfer Affidavit	Attorney for Sponsor	18	8.00	144.00	0.08	11.52
Supplemental Statement	Attorney for Sponsor	18	0.25	4.50	1.00	4.50
Final Data Statements (attached to closing letter).	Attorney for Sponsor	18	8.00	144.00	32.00	4608.00
Accountants' Closing Letter	Accountant	18	8.00	144.00	8.00	1152.00
Accountants' OSC Letter	Accountant	18	8.00	144.00	8.00	1152.00
Structuring Data	Accountant	18	8.00	144.00	8.00	1152.00
Financial Statements	Accountant	18	8.00	144.00	1.00	144.00
Principal and Interest Factor File Specifications.	Trustee	18	8.00	144.00	16.00	2304.00
Distribution Dates and Statement	Trustee	18	8.00	144.00	0.42	60.48
Term Sheet	Sponsor	18	8.00	144.00	2.00	288.00
New Issue File Layout	Trustee	18	8.00	144.00	4.00	576.00
Flow of Funds	Attorney for Trustee	18	8.00	144.00	0.16	23.04
Trustee Receipt	Trustee Attorney	18	8.00,	144.00	2.00	288.00

Type of information collection	(Prepared by)	Number of potential sponsors	Estimated annual frequency per respondant	Total annual responses	Estimated average hourly burden	Estimated annual burden hours
Subtotal				$3,316.50		14,300.82
Platinum Securities						
Deposit Agreement	Depositor	19	10.00	190.00	1.00	190.00
MBS Schedule	Depositor	19	10.00	190.00	0.16	30.40
New Issue File Layout	Depositor	19	10.00	190.00	4.00	760.00
Principal and Interest Factor File Specifications.	Trustee	19	10.00	190.00	16.00	3040.00
Subtotal				$760.00		$4,020.40
Total Annual Responses				$4,076.50		
Total Burden Hours						$18,321.22
Calculation of Burden Hours:						
Sponsors × Frequency per Year = Est. Annual Frequency						
Est. Annual Frequency × Est. Average Completion Time = Est. Annual Burden Hours						

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 23, 2016.

Anna P. Guido,

Department of Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–20799 Filed 8–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–64]

30-Day Notice of Proposed Information Collection: Application for Community Compass TA and Capacity Building Program NOFA

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 20, 2016 at 81 FR 24628.

A. Overview of Information Collection

Title of Information Collection: Application for Community Compass TA and Capacity Building Program NOFA.

OMB Approval Number: 2506–0198.

Type of Request: Extension.

Form Number: SF–424, SF424CB, SF–424CBW.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.,* the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

Respondents (*i.e.* affected public): Profit and non-profit organizations.

Estimated Number of Respondents: 52.

Estimated Number of Responses: 52.

Frequency of Response: 1.

Average Hours per Response: 100.

Total Estimated Burdens: 5200.

Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application	52	1	52	100	5200	$0	$0
Work Plans	23	10	230	18	4140	40	165,600
Reports	23	4	92	6	552	40	22,080
Recordkeeping	23	12	276	6	1656	40	66,240
Total					11548		253,920

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 23, 2016.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–20797 Filed 8–29–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016– N119; FXES11130900000C2–167–FF09E32000]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 22 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 22 species under the Endangered Species Act of 1973, as amended (Act). A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of information that has become available since the last review of each of these species.

DATES: To allow us adequate time to conduct these reviews, we must receive your comments or information on or before October 31, 2016. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information we receive on these species, see "Request for New Information."

FOR FURTHER INFORMATION CONTACT: For species-specific information, see "Request for New Information."

SUPPLEMENTARY INFORMATION:

Why do we conduct A 5-Year review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html,* scroll down to "Learn More about 5-Year Reviews," and click on our factsheet.

Species Under Review

This notice announces our active review of 15 species that are currently listed as endangered:

Fish and Wildlife

Alabama beach mouse (*Peromyscus polionotus ammobates*)
Choctawhatchee beach mouse (*Peromyscus polionotus allophrys*)
Key Largo woodrat (*Neotoma floridana smalli*)
Boulder darter (*Etheostoma wapiti*)
Oyster mussel (*Epioblasma capsaeformis*)
Turgid blossom (*Epioblasma turgidula*)
Georgia pigtoe (*Pleurobema hanleyianum*)
Interrupted rocksnail (*Leptoxis foremani*)
Rough hornsnail (*Pleurocera foremani*)

Plants

Clematis socialis (Alabama leather flower)
Conradina glabra (Apalachicola rosemary)
Amorpha crenulata (Crenulate lead-plant)
Isoetes melanospora (Black spored quillwort)
Isoetes tegetiformans (Mat forming quillwort)
Spigelia gentianoides (Gentian pinkroot)

This notice also announces our active review of 7 species that are currently listed as threatened:

Fish and Wildlife

Louisiana pearlshell (*Margaritifera hembeli*)
Tulotoma snail (*Tulotoma magnifica*)

Plants

Amaranthus pumilus (Seabeach amaranth)
Amphianthus pusilus (Little amphianthus)
Lesquerella lyrata (Lyrate bladderpod)
Pinguicula ionantha (Godfrey's butterwort)
Chamaesyce garberi (Garber's spurge)

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How Do We Determine Whether A Species Is Endangered or Threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Definitions

A. *Species* means any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether A species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

A. To get more information on a species;

B. To submit information on a species; or

C. To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

Mammals

- Alabama beach mouse (*Peromyscus polionotus ammobates*): Alabama Ecological Services Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526; fax 251–441–6222. For information on this species, contact Bill Lynn at the ES Field Office by phone at 251–441–5181 or by email at *william_lynn@fws.gov.*
- Choctawhatchee beach mouse (*Peromyscus polionotus allophyrs*): Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, FL 32405; fax 850–763–2717. For information on these species, contact Kristi Yanchis at the ES Field Office by phone at 850–769–0552 or by email at *kristi_yanchis@fws.gov.*
- Key Largo woodrat (*Neotoma floridana smalli*): South Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960; fax 772–469–4265. For information on these species, contact Sandra Sneckenberger at the ES Field Office by phone at 772–469–4321 or by email at *sandra_sneckenberger@fws.gov.*

Fishes, Clams, and Snails

- Boulder darter (*Etheostoma wapiti*), Oyster mussel (*Epioblasma capsaeformis*), and Turgid blossom (*Epioblasma turgidula*): Tennessee Ecological Services Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501; fax 931–528–7075. For information on these species, contact Stephanie Chance at the ES Field Office by phone at 931–528–6481 ext. 211 or by email at *stephanie_chance@fws.gov*
- Louisiana pearlshell (*Margaritifera hembeli*): Louisiana Ecological Services Field Office, U.S. Fish and Wildlife Service, 646 Cajundome Blvd., Suite 400, Lafayette, LA 70506; fax 337–291–3139. For information on this species, contact Monica Sikes at the ES Field Office by phone at 337–291–3118 or by email at *monica_sikes@fws.gov.*
- Georgia pigtoe (*Pleurobema hanleyianum*), Interrupted rocksnail (*Leptoxis foremani*), Tulotoma snail (*Tulotoma magnifica*), and Rough hornsnail (*Pleurocera foreman*): Alabama Ecological Services Field Office (see contact information above). For information on these species, contact Jennifer Grunewald at the ES Field Office by phone at 251–441–6633 or by email at *jennifer_grunewald@fws.gov.*

Plants

- *Clematis socialis* (Alabama leatherflower): Mississippi Ecological Services Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213; fax 601–965–4340. For information on these species, contact Scott Wiggers at the ES Field Office by phone at 601–965–4900 or by email at *marion_wiggers@fws.gov.*
- *Conradina glabra* (Appalachicola rosemary), *Pinguicula ionantha* (Godfrey's butterwort), and *Spigelia gentianoides* (Gentian pinkroot): Panama City Ecological Services Field Office, (see contact information above). For information on these species, contact Vivian Negron-Ortiz at the ES Field Office by phone at 850–769–0552 or by email at *vivian_negron-ortiz@fws.gov.*
- *Amorpha crenulata* (Crenulate lead-plant) and *Chamaesyce garberi* (Garber's spurge): South Florida Ecological Services Field Office (see contact information above). For information on this species, contact David Bender at the ES Field Office by phone at 772–469–4294 or by email at *david_bender@fws.gov.*
- *Lesquerella lyrata* (Lyrate bladderpod): Alabama Ecological Services Field Office (see contact information above). For information on this species, contact Shannon Holbrook at the ES Field Office by phone at 251–441–5181 or by email at *shannon_holbrook@fws.gov.*
- *Amphianthus pusilus* (Little amphianthus), *Isoetes melanospora* (black spored quillwort), *Isoetes tegetiformans* (mat forming quillwort): Georgia Ecological Services Field Office, U.S. Fish and Wildlife Service, 105 Westpark Drive, Suite D, Athens, GA 30606; fax 706–613–6059. For information on these species, contact Deborah Harris at the ES Field Office by phone at 706–613–9493 ext 224 or by email at *deborah_harris@fws.gov.*
- *Amaranthus pumilus* (Seabeach amaranth): Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, P.O. Box 33726, Raleigh, NC 33726; fax 919–856–4558. For information on these species, contact Dale Suiter at the ES Field Office by phone at 919–856–4520 ext 18 or by email at *dale_suiter@fws.gov.*

We request any new information concerning the status of any of these 22 species. See "What Information Do We Consider In Our Review?" for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 19, 2016.

Mike Oetker,

Acting Regional Director, Southeast Region.

[FR Doc. 2016–20670 Filed 8–29–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Renewal of Agency Information Collection for Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) has submitted to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Acquisition of Trust Land, 25 CFR 151 authorized by OMB Control Number 1076–0100. This information collection expires August 31, 2016.

DATES: Interested persons are invited to submit comments on or before September 29, 2016.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW., MS–4639–MIB, Washington, DC 20240; facsimile: (202) 219–1065; email: *Sharlene.Roundface@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW., MS–4639–MIB, Washington, DC 20240; facsimile: (202) 219–1065; email: *Sharlene.Roundface@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 5 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 465) and the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. 2202) authorize the Secretary of the Interior (Secretary), in his/her discretion, to acquire lands through purchase, relinquishment, gift, exchange, or assignment within or without existing reservations for the purpose of providing land for Indian Tribes. Other specific laws also authorize the Secretary to acquire lands for individual Indians and Tribes. Regulations implementing the acquisition authority are at 25 CFR 151. In order for the Secretary to acquire land on behalf of individual Indians and Tribes, the Bureau of Indian Affairs (BIA) must collect certain information to identify the party(ies) involved and to describe the land in question. The Secretary also solicits additional information deemed necessary to make a determination to accept or reject an application to take land into trust for the individual Indian or Tribe, as set out in 25 CFR 151.

This information collection allows the BIA to review applications for compliance with regulatory and statutory requirements. No specific form is used. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0100.

Title: Acquisition of Trust Land, 25 CFR 151.

Brief Description of Collection: Submission of this information allows the BIA to review applications for the acquisition of land into trust status by the United States on behalf of individual Indians and Indian Tribes, pursuant to 25 CFR 151. The information also allows the Secretary to comply with the National Environmental Policy Act and to determine if title to the subject property is marketable and unencumbered. Respondents supply information and data in accordance with 25 CFR 151 as no specific forms are used for the BIA to make an evaluation and determination on the application.

Type of Review: Revision of a currently approved collection.

Respondents: Individual Indians and Federally Recognized Indian Tribes seeking acquisition of land into trust status.

Number of Respondents: 500.

Number of Responses: 500.

Frequency of Response: On occasion.

Obligation to Respond: A response is required to obtain or maintain a benefit.

Estimated Time per Response: Ranges from 100 to 150 hours.

Estimated Total Annual Hour Burden: 55,000.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–20811 Filed 8–29–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

New Agency Information Collection for the Bureau of Indian Education Medication Authorization and Incident Report Forms

[167A2100DD.AADD001000.A0E501010.999900]

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of new information collection and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is seeking comments and will ask the Office of Management and Budget (OMB) for approval on the new collection of information, Bureau of Indian Education Medication Authorization and Incident Report Forms.

DATES: Submit comments on or before October 31, 2016.

ADDRESSES: You may submit comments on the information collection to Ms. Juanita Mendoza, Program Analyst, Bureau of Indian Education, U.S. Department of the Interior, 1849 C Street NW., MS: #4656 MIB, Washington, DC 20240; or email to: *Juanita.Mendoza@bie.edu.* Please mention that your comments concern the Medication Authorization and Incident Report Forms, OMB Control Number 1076–NEW.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, and any explanatory information, see the contact information provided in the **ADDRESSES** section above. The related forms can be viewed at *http://www.bia.gov/WhoWeAre/AS-IA/ORM/InformationCollections/index.htm.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIE is seeking approval of the new information collection, titled "Bureau of Indian Education Medication Authorization and Incident Report Forms." The BIE has the sole responsibility for the operation and financial support of the Bureau-operated school system that it has established on or near Indian reservations throughout the Nation for Indian children, as authorized in 25 U.S.C. 2000. Currently, the BIE oversees a total of 183 elementary, secondary, residential and peripheral dormitories across 23 states. Of the total number of schools, 130 schools are tribally controlled under Public Law 93–638 Indian Self-Determination Contracts or Public Law 100–297 Tribally Controlled Grant Schools Act; and 53 Schools are operated by the BIE.

In August 2014, under the *Ortiz* v. *Sky City Community School and the Bureau of Indian Education,* Docket No. IDEA 2014–02, a resolution agreement was entered by both parties. As part of the resolution agreement, BIE is developing and implementing a policy which will allow Bureau-operated schools to collect necessary documentation to administer over-the-counter medication and document medication administration incidents. In addition, there will be two standard forms: (1) To provide authorization for administering medication titled as "Authorization to Administer Prescribed/Over-the-Counter Medication," and (2) for notification to parents/guardians of any medication incidents titled as "Medication Incident Report."

The information is necessary to document a request for medication administration by the parent/guardian and to provide guidance regarding the type of medication and how it may be administered. School personnel must have detailed information about the medication a student receives so it can be administered correctly. School personnel must also verify the medication a student is receiving has been approved and/or prescribed by a licensed physician. The authorization form is required every school year for each new or continuing order or if there is a change in dosage or time of administration during the school year. The medication incident report will be completed as needed, by school personnel and notification to parents of medication incidents. The BIE will only require the use of the two forms under this collection of information by the Bureau-operated schools. Schools controlled under Public Law 93–638 Indian Self-Determination Contracts or Public Law 100–97 Tribally Controlled Grant Schools Act, may adopt the policy and implement within their school system. The data will be maintained by each Bureau-operated school.

The information collected on these forms are covered by the Family Education Rights and Privacy Act of 1974, 20 U.S.C. 1232(g), and Health Insurance Portability and Accountability Act of 200, 15 U.S.C. 1693(b). The information collected is subject to the system of records notice "Native American Student Information System, BIA—22" referenced as 73 FR 40605 dated July 15, 2008. The burden hours for this new collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–NEW.

Title: Bureau of Indian Education Medication Authorization and Incident Report Forms.

Brief Description of Collection: BIE is implementing a policy which will allow Bureau-operated schools to collect necessary documentation to administer over-the-counter medication. School personnel must have detailed information about the medication a student receives so it can be administered correctly and must verify the medication a student is receiving has been approved and/or prescribed by a licensed physician. The school is also required to document medication administration incidents, on an as needed basis, for student health purposes and notification to parents/guardians of child medication incident.

Type of Review: New collection (Request for a New OMB Control Number).

Respondents: Bureau-operated School Personnel and parents/guardians of child attending Bureau-operated school.

Number of Respondents: 53 per year.

Estimated Number of Responses: 55 per year.

Estimated Time per Response: Ranges from 30 minutes to 45 minutes.

Frequency of Response: Required every school year for each new or continuing order or if there is a change in dosage or time of administration during the school year. The medication incident report will be complete as needed, by school personnel and notification to parents of medication incidents.

Obligation To Respond: Voluntary.

Estimated Total Annual Hour Burden: 29 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–20816 Filed 8–29–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW 183391]

Public Land Order No. 7855; Withdrawal of National Forest System Land for the Burgess Junction Visitor Center and Administrative Site; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: On behalf of the United States Forest Service, this order withdraws, subject to valid existing rights, 73 acres of National Forest System land in the Bighorn National Forest from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, for a period of 20 years to protect capital improvements constructed for the Burgess Junction Visitor Center and Administrative Site.

DATES: This Public Land Order is effective on August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Gayle Laurent, USDA Forest Service, Region 2, Supervisors Office, 2013 Eastside Second Street, Sheridan, Wyoming 82801; telephone 307–674–2656; email *glaurent@fs.fed.us;* or Janelle Wrigley, BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; telephone 307–775–6257; email *jwrigley@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Burgess Junction Visitor Center and Administrative Site was constructed in the mid-1990s. Burgess Junction attracts an estimated 200,000 visitors per year because of its proximity to two major travel corridors, both designated as "National Forest Scenic Byways."

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral leasing laws, to protect the capital improvements constructed for the Burgess Junction Visitor Center and Administrative Site:

Big Horn National Forest

Sixth Principal Meridian, Wyoming

T. 56 N., R. 88 W.,
  Sec. 31, S½NE¼NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼, N½SE¼NE¼, N½SW¼SE¼NE¼, and SE¼SE¼NE¼, those portions lying northwesterly of the centerline of United States Highway 14;
  Sec. 32, S½NW¼NW¼NW¼, SW¼NW¼NW¼, and NW¼SW¼NW¼, those portions lying northeasterly of the centerline of United States Highway 14.

The area described contains approximately 73 acres in Sheridan County.

2. The withdrawal made by this order does not alter the applicability of the public land laws other than under the United States mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 9, 2016.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–20718 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW 182138]

Public Land Order No. 7856; Withdrawal of National Forest System Land for the Medicine Wheel/Medicine Mountain National Historic Landmark; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order

SUMMARY: Subject to valid existing rights, this order withdraws approximately 4,513 acres of National Forest System land in the Bighorn National Forest from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, or disposal under the Materials Act of 1947, for a period of 20 years to protect and preserve existing heritage resources and American Indian spiritual values within the formally designated Medicine Wheel/Medicine Mountain National Historic Landmark (NHL).

DATES: This Public Land Order is effective on August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Gayle Laurent, U.S. Forest Service, Region 2, Supervisors Office, 2013 Eastside Second Street, Sheridan, Wyoming 82801, 307–674–2656, or Marilyn Roth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6189 or via email at *m75roth@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This order withdraws National Forest System land to protect and preserve significant existing cultural resources and American Indian spiritual values within the formally designated Medicine Wheel/Medicine Mountain NHL. Heritage resources include artifacts, structures, or sites made by people or natural features that acquire historic value through human activities. Native Americans also use the Medicine Wheel/Medicine Mountain NHL as part of traditional ceremonial practices where tranquility is crucial.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under United States mining laws, but not from leasing under the mineral or geothermal leasing laws, or disposal under the Materials Act of 1947, to protect and preserve existing heritage resources and American Indian spiritual values within the formally designated Medicine Wheel/Medicine Mountain NHL.

Big Horn National Forest

Sixth Principal Meridian, Wyoming

T. 56 N., R. 91 W.,
  Sec. 19, lot 1.
T. 56 N., R. 92 W.,
  Sec. 8, SE¼;
  Sec. 9, S½;
  Sec. 10, W½SW¼;
  Sec. 13, S½NW¼ and SW¼;
  Sec. 14, W½NW¼ and S½;
  Sec. 15, E½, NW¼, N½SW¼, and SE¼SW¼;
  Sec. 16, N½, SW¼, N½SE¼, and SW¼SE¼;
  Sec. 17, E½;
  Sec. 20, NE¼;
  Sec. 21, N½;
  Sec. 22, N½ and N½SE¼, excepting a strip of land 200 feet on each side of the center line of the Medicine Wheel Road, No. 104 in the N½;
  Sec. 23, N½, N½SW¼, and N½SE¼, excepting a strip of land 200 feet on each side of the center line of the Medicine Wheel Road, No. 104 in the N½, N½SW¼, and N½SE¼;
  Sec. 24, lots 1 and 2, W½NE¼, and W½, excepting a strip of land 200 feet on each side of the center line of the Medicine Wheel Road, No. 104 in the W½;
  Sec. 25, N½NW¼, excepting a strip of land 200 feet on each side of the center line of the Medicine Wheel Road, No. 104 in the N½NW¼.

The area described contains approximately 4,513 acres in Big Horn County.

2. The withdrawal made by this order does not alter the applicability of laws governing the use of National Forest System land other than under the United States mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 8, 2016.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–20715 Filed 8–29–16; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–963]

Certain Activity Tracking Devices, Systems, and Components Thereof; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a recommended determination on remedy and bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, in the event the Commission finds a violation, specifically a limited exclusion order and cease and desist orders, lasting no more than one month, against certain activity tracking devices, systems, and components thereof, imported by respondents Fitbit, Inc. of San Francisco, California; Flextronics International Ltd. of San Jose, California; and Flextronics Sales & Marketing (A–P) Ltd. of Port Louis, Mauritius. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on EDIS at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's recommended determination on remedy and bonding issued in this investigation on August 23, 2016. Comments should address whether issuance of a limited exclusion order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on September 23, 2016. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (Inv. No. 337–TA–963) in a prominent place on the cover page, the first page, or both. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: August 24, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–20702 Filed 8–29–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–030]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 2, 2016 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731–TA–1334–1337 (Preliminary) (Emulsion Styrene-Butadiene Rubber from Brazil, Korea, Mexico, and Poland). The Commission is currently scheduled to complete and file its determinations on September 6, 2016; views of the Commission are currently scheduled to be completed and filed on September 13, 2016.
5. Vote in Inv. Nos. 701–TA–540 and 542–544 and 731–TA–1283, 1285, 1287 and 1289–1290 (Final) (Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom). The Commission is currently scheduled to complete and file its determinations and views of the Commission on September 12, 2016.
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 25, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–20903 Filed 8–26–16; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: National Drug Threat Survey

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kirsten Waters, Unit Chief, Domestic Strategic Intelligence Unit, Office of Strategic Intelligence and Programs, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* National Drug Threat Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes state, local and tribal law enforcement agencies. Combined with other Federal, state, and local information, the survey is used to present an accurate picture of the national drug threat.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 12,782 respondents will complete the survey within approximately 33 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 4,218. This figure was derived by multiplying the number of respondents (12,782) × frequency of response (1) × hours (0.33). The estimate time for response is a

conservative estimate. The technology available to the respondent will further reduce response time.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 25, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20785 Filed 8–29–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1190—NEW]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (the Department), Civil Rights Division, Disability Rights Section (DRS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). This proposed information collection request was previously published in the **Federal Register** at 81 FR 37643, on June 10, 2016, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until September 29, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by any one of the following methods: By email at *DRS.PRA@usdoj.gov;* by regular U.S. mail at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885; by overnight mail, courier, or hand delivery at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005; or by phone at (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). Include in the subject line of all comments the title of this proposed collection: "Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description." Written comments or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or sent to *OIRA_submissions@omb.eop.gov.*

You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected can be enhanced; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* New information collection.

2. *The title of the form/collection:* Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form Number: None.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

4. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing movies with closed movie captioning and audio description, and that provide notice of movie showings and times. For purposes of the proposed rule and this notice, "movie theater" means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Department's Civil Rights Division, Disability Rights Section (DRS), is requesting PRA approval of a new collection that would require movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums. On August 1, 2014, the Department published a notice of proposed rulemaking amending its ADA title III regulation, 28 CFR part 36, to specifically require movie theaters to provide closed movie captioning and audio description for patrons with hearing and vision disabilities (NPRM). 79 FR 44976. The NPRM proposed a new information collection requirement that is the subject of this notice. Proposed § 36.303(g)(5) stated that "movie theaters shall ensure that communications and advertisements intended to inform potential patrons of movie showings and times, that are provided by the theater through Web sites, posters, marquees, newspapers, telephone, and other forms of communications, shall provide information regarding the availability of closed movie captioning and audio description for each movie." Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out which theaters are showing movies with these features, and the times those movies are being shown. All public comments on the NPRM supported the inclusion of a notice requirement in some form.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,876 respondents will be required to disclose information concerning the availability of closed movie captioning and audio description in their existing communications concerning movie showings and times. However, this number includes movie theaters that show analog movies exclusively. In the NPRM, the Department sought public

comment on whether it should defer application of the proposed requirements for theaters with auditoriums that show analog movies exclusively. If the Department decides to defer coverage of analog auditoriums, then the number of respondents may drop. DRS estimates that all of the approximately 1,876 respondents will comply with this requirement.

Based on a review of current movie theater communications, it is estimated that an average of 10 minutes per respondent is needed to update existing notices of movie showings and times with this information. The Department acknowledges, however, that the amount of time it will take a respondent to comply with this requirement will likely vary because the amount of time necessary depends on the number of movies that the respondent is able to show at any given time.

Frequency: The Department anticipates that movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than other movies, but the Department estimates that movie theaters will update their listings to include this information weekly. If, in the future, all movies are distributed with these features, specific notice on a movie-by-movie basis may no longer be necessary, and a movie theater may only need to advise the public that it shows movies with closed movie captioning and audio description.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 16,259 hours. It is estimated that respondents will take an average of 10 minutes (1/6 of an hour) to update their existing listings of movie showings and times to include this information and that such updates will occur weekly for new movies that are added to the schedule. The total annual public burden hours for disclosing this information sum to 16,258.67 hours (1,876 respondents × 1/6 hours × 52 times a year = 16,258 and 2/3 hours). Assuming a movie theater spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.67 hours annually (1/6 hour × 52 times) performing the necessary tasks to comply with this requirement.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 25, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–20775 Filed 8–29–16; 8:45 am]

BILLING CODE 4410–13–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Radiation Safety Officer on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should currently be functioning as a Radiation Safety Officer.

DATES: Nominations are due on or before October 31, 2016.

Nomination Process: Submit an electronic copy of resume or curriculum vitae to Ms. Michelle Smethers, *Michelle.Smethers@nrc.gov.* Please ensure that the resume or curriculum vitae includes the following information, if applicable: education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Smethers, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards; (301) 415–6711; *Michelle.Smethers@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI Radiation Safety Officer provides advice to NRC staff on health physics issues associated with medical applications of byproduct material. This advice includes providing input on NRC proposed rules and guidance documents; providing recommendations on the training and experience of radiation safety officers; identification of medical events; evaluating non-routine uses of byproduct material; bringing key issues in the radiation safety officer community to the attention of NRC staff; evaluating the security of byproduct material used in medical and research facilities, and other issues as they relate to radiation safety and NRC medical-use policy.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in letters or during the selection process.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) two radiation oncologists; (d) diagnostic radiologist; (e) therapy medical physicist; (f) nuclear medicine physicist; (g) nuclear pharmacist; (h) health care administrator; (i) radiation safety officer; (j) patients' rights advocate; (k) Food and Drug Administration representative; and (l) Agreement State representative.

NRC is inviting nominations for the Radiation Safety Officer to the ACMUI. The term of the individual currently occupying this position will end September 27, 2017. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed for travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland, this 24th day of August, 2016.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–20809 Filed 8–29–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: August 29, September 5, 12, 19, 26, October 3, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 29, 2016

There are no meetings scheduled for the week of August 29, 2016.

Week of September 5, 2016—Tentative

Friday, September 9, 2016

2:45 p.m. Affirmation Session (Public Meeting) (Tentative), CB&I AREVA MOX Services, LLC (Mixed Oxide Fuel Fabrication Facility, Possession and Use License), Intervenors' Motion to Amend Protective Order

Week of September 12, 2016—Tentative

Monday, September 12, 2016

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Tuesday, September 13, 2016

2:00 p.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Friday, September 16, 2016

9:00 a.m. Briefing on Fee Process (Public Meeting), (Contact: Michele Kaplan: 301–415–5256)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of September 19, 2016—Tentative

Monday, September 19, 2016

9:00 a.m. Briefing on NRC Tribal Policy Statement (Public Meeting), (Contact: Michelle Ryan: 630–829–9724)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of September 26, 2016—Tentative

There are no meetings scheduled for the week of September 26, 2016.

Week of October 3, 2016—Tentative

Wednesday, October 5, 2016

9:00 a.m. Hearing on Combined Licenses for William States Lee III Nuclear Station, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting), (Contact: Brian Hughes: 301–415–6582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, October 6, 2016

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting), (Contact: Mark Banks: 301–415–3718)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: August 25, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–20916 Filed 8–26–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0180]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from August 2, 2016, to August 15, 2016. The last biweekly notice was published on August 16, 2016.

DATES: Comments must be filed by September 29, 2016. A request for a hearing must be filed by October 31, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0180. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0180, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0180.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0180, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 31, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission to the NRC," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a hearing request and petition to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Dominion Nuclear Connecticut, Inc. (DNC), Docket No. 50–336, Millstone Power Station, Unit No. 2 (MPS2), New London County, Connecticut

Date of amendment request: May 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16153A026.

Description of amendment request: The amendment would add the AREVA topical report, EMF–2103(P)(A), "Realistic Large Break [loss of coolant accident] LOCA [RLBLOCA] Methodology for Pressurized Water Reactors," Revision 3, to MPS2 Technical Specification (TS) 6.9.1.8.b, "Core Operating Limits Report," which lists the analytical methods used to determine the core operating limits. The methodology in EMF–2013(P)(A) for RLBLOCA has been used for the MPS2 LBLOCA analysis of the AREVA Standard CE–14 HTP fuel product with M5 cladding, which DNC plans to introduce beginning with the fresh fuel for MPS2 Cycle 25 in spring 2017.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with NRC staff revisions provided in [brackets]:

1. Does the proposed [amendment] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to TS 6.9.1.8.b permits the use of the AREVA RLBLOCA methodology to analyze the MPS2 LBLOCA to ensure that the plant continues to meet the Emergency Core Cooling System (ECCS) performance acceptance criteria in 10 CFR 50.46. The RLBLOCA analysis demonstrates MPS2 continues to satisfy the 10 CFR 50.46 ECCS performance acceptance criteria using an NRC-approved evaluation model. The proposed change to the list of NRC-approved methodologies listed in TS 6.9.1.8.b has no impact on how the plant is operated or configured. Addition of this methodology to the list of methodologies in TS 6.9.1.8.b does not impact either the probability or consequences of an accident currently evaluated in Chapter 14 of the [Updated Final Safety Analysis Report] UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed [amendment] create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change to TS 6.9.1.8.b adds topical report EMF–2103(P)(A) to the list of approved methodologies for determining core operating limits at MPS2. The proposed amendment has no adverse effect on plant operation or accident mitigation equipment. The amendment does not create any new credible failure mechanisms, malfunctions, or accident initiators not considered in the current design basis accidents (DBAs). The response of the plant and operators following a DBA will not be changed. The proposed amendment does not create the possibility of a new failure mode associated with any equipment or human performance failures. Thus, the possibility of a new or different type of accident is not created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated within the FSAR.

3. Does the proposed [amendment] involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS 6.9.1.8.b adds topical report EMF–2103(P)(A) to the list of approved methodologies for determining core operating limits at MPS2. Approved methodologies will be used to ensure that the plant continues to meet applicable design criteria and safety analysis acceptance criteria. The proposed amendment has no [e]ffect on the ability of the plant to mitigate DBAs and ensure consequences of the existing DBA remains bounding. The margin of safety to mitigate consequences of DBAs is not reduced. Structures, systems and components used to mitigate DBAs are not affected. No changes are being made to safety limits or safety system settings required by TS. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Travis L. Tate.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: July 11, 2016. A publicly-available version is in ADAMS under Accession No. ML16193A005.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to eliminate TS Section 5.5.7, "Inservice Testing [IST] Program." A new defined term, "INSERVICE TESTING PROGRAM," is added to the TS Definitions section. This amendment request is consistent with Technical Specifications Task Force (TSTF)–545, Revision 3, "TS Inservice Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would revise TS Chapter 5, Administrative Controls, Section 5.5, Programs and Manuals, by eliminating the TS 5.5.7, Inservice Testing Program, specification. Most requirements in the IST Program would be removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM Code [ASME Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, Inservice Test Frequency. The remaining requirements in the Section 5.5 IST Program would be eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, INSERVICE TESTING PROGRAM, would be added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of IST is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. IST frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any [accident] previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of IST performed. In most cases, the frequency of IST would be unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change would eliminate some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also would allow inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change would eliminate the existing TS SR 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead would require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also would eliminate a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeanne Cho, Senior Counsel, Entergy Services, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: David J. Wrona.

LaCrosseSolutions, Inc., and Dairyland Power Cooperative, Docket Nos.: 50–409 and 72–046, La Crosse Boiling Water Reactor (LACBWR), La Crosse County, Wisconsin

Date of amendment request: June 27, 2016. A publicly-available version is in ADAMS under Accession No. ML16200A083.

Description of amendment request: The proposed amendment would amend the Possession Only License for the LACBWR to reflect the approval of the LACBWR License Termination Plan (LTP) when that review and approval process is completed by the NRC staff. The LTP will become a supplement to LACBWR's other decommissioning documents and will be implemented by the licensee to complete decommissioning activities at the LACBWR site. Once decommissioning is complete, a separate request will be made to the NRC by the licensee to terminate the LACBWR license.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The only remaining accident following completion of fuel transfer to the [Independent Spent Fuel Storage Installation] (ISFSI) is a radioactive release accident where spontaneous release of the (non-ISFSI-related) radioactive source term remaining at the LACBWR site in a form and quantity is immediately released through an airborne or liquid release path.

A radioactive release analysis was performed to establish the bounding event at the site considering the current stage of LACBWR decommissioning. 1.175 [Curies]

(Ci) of radioactive material is conservatively estimated in the analysis to be present on plant surfaces, and as such represents the assumed total non-ISFSI radioactive source term remaining at the LACBWR site. The LACBWR analysis of postulated release events separately considers the portion of this remaining radioactive contamination that is immediately releasable as airborne contamination and that is immediately releasable as contaminated liquid.

A conservative fraction of 30 percent of the total remaining source term is assumed in the analysis to be immediately available for airborne release. The analysis results demonstrate that the consequences of releasing 30 percent of the non-ISFSI radioactive source term remaining at the LACBWR site to the atmosphere are well within the applicable 10 CFR 100.11 and [U.S. Environmental Protection Agency] (EPA) [Protective Action Guides] (PAG) limits.

The portion of the total remaining source term conservatively assumed in the analysis to be available for liquid release at any one time is 80 percent of the radioactively contaminated liquid stored in the site retention tank. In the unlikely event that 80 percent of the retention tank volume at a total radionuclide concentration of 3.9E–03 μCi/cc were to be released from the retention tank at a flow rate of 20 [gallons per minute] (gpm), the normal effluent concentration limits of 10 CFR 20, Appendix B, Table 2, would not be exceeded. Thus, the liquid release analysis demonstrates that there is no reasonable likelihood that a postulated radioactive liquid release event could result in exceeding the normal effluent concentration limits of 10 CFR 20, Appendix B.

With consideration for the current stage of LACBWR decommissioning and with spent nuclear fuel now stored in the ISFSI, the bounding radioactive release analysis, for both airborne and liquid releases, confirms that the minimal radioactive material resulting from LACBWR operation and remaining on the LACBWR site is insufficient for any potential event to result in exceeding dose limits or otherwise involving a significant adverse effect on public health and safety.

The proposed change does not affect the boundaries used to evaluate compliance with liquid or gaseous effluent limits, and has no impact on plant operations. The proposed changes do not have an adverse impact on the remaining decommissioning activities or any decommissioning related postulated accident consequences.

The proposed changes related to the approval of the LTP do not affect operating procedures or administrative controls that have the function of preventing or mitigating the remaining decommissioning design basis accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The accident analysis for the facility related to decommissioning activities is described in the [Decommissioning Plan/Post-Shutdown Decommissioning Activities Report] (D–Plan/PSDAR). The requested license amendment is consistent with the plant activities described in the D-Plan/PSDAR. Thus, the proposed changes do not affect the remaining plant systems, structures, or components in a way not previously evaluated.

There are sections of the LTP that refer to the decommissioning activities still remaining. These activities are performed in accordance with approved site processes and undergo a 10 CFR 50.59 review as required prior to initiation. The proposed amendment merely makes mention of these processes and does not bring about physical changes to the facility.

Therefore, the facility conditions for which the remaining postulated accident has been evaluated is still valid and no new accident scenarios, failure mechanisms, or single failures are introduced by this amendment. The system operating procedures are not affected.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The LTP is a plan for demonstrating compliance with the radiological criteria for license termination as provided in 10 CFR 20.1402. The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 [millirem per year] (mrem/yr) public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use (one of the criteria of 10 CFR 20.1402). This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Since the License Termination Plan is designed to comply with the radiological criteria for license termination for unrestricted use, the LTP supports this margin of safety.

In addition, the LTP provides the methodologies and criteria that will be used to perform remediation activities of residual radioactivity to demonstrate compliance with the [As Low As Reasonably Achievable] (ALARA) criterion of 10 CFR 20.1402.

Additionally, the LTP is designed with recognition that (a) the methods in MARSSIM (Multi-Agency Radiation Survey and Site Investigation Manual) and (b) the building surface contamination levels are not directly applicable to use with complex nonstructural components. Therefore, the LTP states that nonstructural components remaining in buildings (*e.g.*, pumps, heat exchangers, etc.) will be evaluated against the criteria of Regulatory Guide 1.86, “Termination of Operating Licenses for Nuclear Reactors,” to determine if the components can be released for unrestricted use. The LTP also states that materials, surveyed and evaluated as a-part of normal decommissioning activities and prior to implementation of the final radiation surveys, will be surveyed for release using current site procedures to demonstrate compliance with the “no detectable” criteria. Such materials that do not pass these criteria will be controlled as contaminated.

Also, as previously discussed, the bounding radioactive release accident analysis for decommissioning is based on a conservative estimate of the radioactive material remaining onsite. Since the bounding accident results in a release of more airborne and liquid radioactivity than can be released from planned LTP decommissioning events, the margin of safety associated with the consequences of decommissioning accidents is not reduced by this activity.

Thus, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Russ Workman, General Counsel, Energy Solutions, 299 South Main Street, Suite 1700, Salt Lake City, Utah 84111.

NRC Branch Chief: Bruce Watson.

South Carolina Electric and Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: June 16, 2016, as revised August 8, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML16168A257 and ML16221A649, respectively.

Description of amendment request: The requested amendment proposes to depart from approved AP1000 Design Control Document Tier 2* and associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR). Specifically, the requested amendment proposes to depart from UFSAR text and figures that describe the connections between floor modules and structural wall modules in the containment internal structures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29.

The change of the design details for the floor modules and the connections between floor modules and the structural wall modules, and the change to more clearly state the design requirement that these connections meet criteria and requirements of American Concrete Institute (ACI) 349 and American Institute of Steel Construction (AISC) N690, do not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change of the design details for the connections between floor modules and the structural wall modules, and the clarification of design requirements for these connections, do not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is to revise design details for the floor modules and the connections between floor modules and the structural wall modules, and more clearly state the design requirement that these connections meet criteria and requirements of ACI 349 and AISC N690. The clarification and changes to the design details for the floor modules and the connections between floor modules and the structural wall modules do not change the design requirements of the nuclear island structures. The clarification and changes of the design details for the floor modules and the connections between floor modules and the structural wall modules do not result in a new failure mechanism for the nuclear island structures or new accident precursors. As a result, the design function of the nuclear island structures is not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus, no margin of safety is reduced. The acceptance limits for the design of seismic Category I structures are included in the codes and standards used for the design, analysis, and construction of the structures. The two primary codes for the seismic Category I structures are American Institute of Steel Construction (AISC) N690 and American Concrete Institute (ACI) 349. The changes to the design of the connection of the floor module to the structural wall modules in the containment internal structures satisfy applicable provisions of AISC N690 and ACI 349 and supplemental requirements included in the UFSAR.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

Acting NRC Branch Chief: Jennifer Dixon-Herrity.

South Carolina Electric and Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: July 19, 2016. A publicly-available version is in ADAMS under Accession No. ML16202A035.

Description of amendment request: The amendment request proposes changes to the Technical Specifications and Updated Final Safety Analysis Report (UFSAR) Tier 2 information to update the Protection and Safety Monitoring System (PMS) to align with the requirements in Institute of Electrical and Electronics Engineers (IEEE) 603–1991, "IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations." IEEE 603–1991, Clause 6.6, "Operating Bypasses," imposes requirements on the operating bypasses (*i.e.,* "blocks" and "resets") used for the AP1000 PMS. The PMS functional logic for blocking the source range neutron flux doubling signal shown in UFSAR Figure 7.2–1 (Sheet 3) requires revision to fully comply with this requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the PMS logic used to terminate an inadvertent boron dilution accident which results in a source range flux doubling signal. An inadvertent boron dilution is caused by the failure of the demineralized water transfer and storage system or chemical and volume control system, either by controller, operator or mechanical failure. The proposed changes to PMS and Technical Specification requirements do not adversely affect any of these accident initiators or introduce any component failures that could lead to a boron dilution event; thus the probabilities of accidents previously evaluated are not affected. The proposed changes do not adversely interface with or adversely affect any system containing radioactivity or affect any radiological material release source term; thus the radiological releases in an accident are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The accident analysis evaluates events involving a decrease in reactor coolant system boron concentration due to a malfunction of the chemical and volume control system in Modes 1 through 6. The Technical Specifications currently provide administrative controls to prevent a boron dilution event in Mode 6. The proposed change would provide additional PMS interlocks and administrative controls for prevention of a boron dilution event applicable in Modes 2, 3, 4, and 5. The proposed changes to the PMS design do not adversely affect the design or operation of safety related equipment or equipment whose failure could initiate an accident from what is already described in the licensing basis. These changes do not adversely affect fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change would add additional restrictions on the source range flux doubling signal operational bypass to align it with the requirements in IEEE 603 and provide assurance that the protection logic is enabled whenever the plant is in a condition where protection might be required. These changes to the PMS design do not adversely impact nor affect the design, construction, or operation of any plant [structure, system, and components (SSCs)], including any equipment whose failure could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected by the proposed changes. Furthermore, no system function, design function, or equipment qualification will be adversely affected by the changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

Acting NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: July 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16207A340.

Description of amendment request: The amendment request proposes changes to a plant-specific Tier 1 (and combined license Appendix C) table and the Updated Final Safety Analysis Report (UFSAR) tables to clarify the flow area for the Automatic Depressurization System (ADS) fourth stage squib valves and to reduce the minimum effective flow area for the second and third stage ADS control valves. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific Design Control Document Tier 1 material departures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not adversely affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events. The proposed changes do not adversely affect the physical design and operation of the second and third stage ADS control valves and fourth stage ADS squib valves, including as-installed inspections, testing, and maintenance requirements, as described in the UFSAR. Therefore, the operation of the second and third stage ADS control valves and fourth stage ADS squib valves is not adversely affected.

The proposed changes do not adversely affect the ability of the second and third stage ADS control valves and fourth stage ADS squib valves to perform their design functions. The designs of the second and third stage ADS control valves and fourth stage ADS squib valves continue to meet the same regulatory acceptance criteria, codes, and standards as required by the UFSAR. In addition, the proposed changes maintain the capabilities of the second and third stage ADS control valves and fourth stage ADS squib valves to mitigate the consequences of an accident and to meet the applicable regulatory acceptance criteria. The proposed changes do not adversely affect the prevention and mitigation of other abnormal events, *e.g.*, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. Therefore, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed changes do not adversely affect the physical design and operation of the second and third stage ADS control valves and fourth stage ADS squib valves, including as-installed inspections, testing, and maintenance requirements, as described in the UFSAR. Therefore, the operation of the second and third stage ADS control valves and fourth stage ADS squib valves is not adversely affected. These proposed changes do not adversely affect any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction or sequence of events that affect safety-related or nonsafety-related equipment. Therefore, this activity does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that results in significant fuel cladding failures.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain existing safety margins. The proposed changes maintain the capabilities of the second and third stage ADS control valves and fourth stage ADS squib valves to perform their design functions. The proposed changes maintain existing safety margin through continued application of the existing requirements of the UFSAR, while updating the acceptance criteria for verifying the design features necessary to confirm the second and third stage ADS control valves and fourth stage ADS squib valves perform the design functions required to meet the existing safety margins in the safety analyses. Therefore, the proposed changes satisfy the same design functions in accordance with the same codes and standards as stated in the UFSAR. These changes do not adversely affect any design code, function, design analysis, safety analysis input or result, or design/safety margin.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, and no margin of safety is reduced. Therefore, the requested amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket No. 50–425, Vogtle Electric Generating Plant, Unit 2, Burke County, Georgia

Date of amendment request: August 12, 2016. A publicly-available version is in ADAMS under Accession No. ML16225A619.

Description of amendment request: The licensee proposes to modify the Vogtle Electric Generating Plant, Unit 2, Technical Specifications (TSs) Limiting Condition for Operation 3.7.9, "Ultimate Heat Sink (UHS)," such that with the 2B Nuclear Service Cooling Water (NSCW) transfer pump inoperable for refurbishment, the Completion Time of Condition 3.7.9.D.2.2 would be 46 days as opposed to 31 days. This TS change would be a one-time change and in effect only for the 2B NSCW transfer pump for the remainder of Cycle 19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

> The proposed change does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. The proposed changes will not alter assumptions relative to the mitigation of an accident or transient event. Furthermore, the UHS will remain capable of adequately responding to a design basis event during the period of the extended CT [Completion Time]. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> 2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?
>
> Response: No.
>
> The proposed change does not introduce any new or unanalyzed modes of operation. The refurbishment of the pump does not involve any unanalyzed modifications to the design or operational limits of the NSCW system. The redundant pump and compensatory measures allowed by the Technical Specifications will remain unaffected. Therefore, no new failure modes or accident precursors are created due to the pump refurbishment during the extended Completion Time. For the reasons noted above, the proposed change will not create the possibility of a new or different accident previously evaluated.
>
> 3. Does the proposed change involve a significant reduction in a margin of safety?
>
> Response: No.
>
> The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment. The performance of these fission product barriers will not be affected by the proposed change; therefore, the margin to the onsite and offsite radiological dose limits are not significantly reduced.
>
> During the extended Completion Time for the 2B NSCW transfer pump, the NSCW system and the UHS will remain capable of mitigating the consequences of a design basis event such as a LOCA [loss-of-coolant accident]. Technical Specifications Action 3.7.9.D.2.1 will be taken to provide an alternate method of basin transfer.
>
> For the reasons noted above, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3 (MPS3), New London County, Connecticut

Date of amendment request: August 31, 2015.

Brief description of amendment: The amendment revised the MPS3 Design Features—Fuel Storage Technical Specification 5.6.3, "Capacity," to specify the spent fuel pool storage capacity limit in terms of the total number of fuel assemblies.

Date of issuance: August 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 270. A publicly-available version is in ADAMS under Accession No. ML16206A001; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–49: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: November 24, 2015 (80 FR 73235).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2016.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1 (GGNS), Claiborne County, Mississippi

Date of application for amendment: September 15, 2015.

Brief description of amendment: The amendment revised the GGNS Technical Specifications (TSs) to eliminate the "Inservice Testing Program," specification in Section 5.5, "Programs and Manuals," which is superseded by Code Case OMN–20. A new defined term, "INSERVICE TESTING PROGRAM," would be added to TS Section 1.1, "Definitions." This request is consistent with TS Task Force (TSTF)-545, Revision 1, "TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing."

Date of issuance: August 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No: 211. A publicly-available version is in ADAMS under Accession No. ML16140A133; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: March 1, 2016 (81 FR 10679).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station (Braidwood), Units 1 and 2, Will County, Illinois and Docket Nos. STN 50–454 and STN 50–455, Byron Station (Byron), Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: February 23, 2016.

Brief description of amendment: The amendments revise technical specifications (TSs) 4.2.1, "Fuel Assemblies," and 5.6.5, "Core Operating Limits Report (COLR)," to allow the use of Optimized ZIRLO™ fuel cladding material in Braidwood, Units 1 and 2, and Byron, Unit Nos. 1 and 2 and to add WCAP–12610–P–A, "VANTAGE+ Fuel Assembly Reference Core Report," and Addendum 1–A to Topical Report WCAP–12610–P–A and CENPD–404–P–A, "Optimized ZIRLO" to the list of documents previously reviewed and approved by the NRC.

Date of issuance: August 1, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos: 190/196. A publicly-available version is in ADAMS under Accession No. ML16180A251; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the Technical Specifications and Licenses.

Date of initial notice in Federal Register: May 10, 2016 (81 FR 28897).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: March 24, 2016, as supplemented by letter dated May 11, 2016.

Brief description of amendments: The amendments revised the frequency for cycling of the recirculation pump discharge valves as specified in Technical Specification (TS) Surveillance Requirement (SR) 3.5.1.5. Specifically, the amendments changed the frequency for the SR such that it is performed in accordance with the Inservice Testing Program.

Date of issuance: August 10, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendments Nos.: 309 (Unit 2) and 313 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML16165A002; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* June 7, 2016 (81 FR 36619).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 10, 2016.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: January 29, 2016.

Brief description of amendments: The amendments revised the CNP, Units 1 and 2, technical specification (TS) requirements to address Generic Letter 2008–01, "Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems," as described in the Technical Specifications Task Force (TSTF) Traveler, TSTF–523, Revision 2, "Generic Letter 2008–01, Managing Gas Accumulation."

Date of issuance: August 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 331—Unit 1 and 312—Unit 2. A publicly-available version is in ADAMS under Accession No. ML16195A004; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License Nos. DPR–58 and DPR–74: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* March 15, 2016 (81 FR 13843).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. (SNC), Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 24, 2014, as supplemented by letter dated September 28, 2015.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by adopting 21 previously NRC-approved Technical Specifications Task Force (TSTF) Travelers and one request not associated with TSTF Travelers. SNC stated that these TSTF Travelers are generic changes chosen to increase the consistency between the Joseph M. Farley Nuclear Plant, Units 1 and 2; the Improved Standard Technical Specifications for Westinghouse plants (NUREG–1431); and the TSs of the other plants in the SNC fleet.

Date of issuance: August 3, 2016.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 203 (Unit 1) and 199 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML15233A448; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* February 3, 2015 (80 FR 5804). The supplemental letter dated September 28, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 16, 2016.

Brief description of amendments: The amendments revised the Technical Specifications to allow the use of Optimized ZIRLO™ as an approved fuel rod cladding.

Date of issuance: August 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 182 (Unit 1) and 163 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16179A386; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* May 24, 2016 (81 FR 32809).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 16, 2016.

Brief description of amendments: The amendments revised the Technical Specifications to allow the use of Optimized ZIRLO™ as an approved fuel rod cladding.

Date of issuance: August 4, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: 204 (Unit 1) and 200 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16179A386; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–2 and NPF–8: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* May 24, 2016 (81 FR 32808).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2016.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 27, 2016, as supplemented by letter dated May 19, 2016.

Brief description of amendment: The amendment revised the Technical Specifications to allow the use of Optimized ZIRLO™ as an approved fuel rod cladding.

Date of issuance: The amendment is effective upon issuance and shall be implemented within 90 days of the date of issuance.

Effective date: August 3, 2016.

Amendment No.: 216. A publicly-available version is in ADAMS under Accession No. ML16179A293; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* April 12, 2016 (81 FR 21603). The supplemental letter dated May 19, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 18th day of August 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–20391 Filed 8–29–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2016–0096]

Omaha Public Power District; Fort Calhoun Station, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of the Omaha Public Power District (the licensee) to withdraw its license amendment application dated April 4, 2016, for a proposed amendment to Renewed Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1 (FCS). The proposed amendment would have modified License Condition D, Fire Protection Program, by withdrawing the commitments in REC–119 and REC–120 to implement certain plant modifications as stated in License Condition Paragraph 3.D.(3)(b).

DATES: The license amendment was withdrawn by the licensee on August 18, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0096 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Carl F. Lyon, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2296, email: *Fred.Lyon@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of the licensee to withdraw its April 4, 2016, license amendment application (ADAMS Accession No. ML16103A348), for a proposed amendment to Renewed Facility Operating License No. DPR–40 for the FCS, located in Washington County, Nebraska.

The proposed amendment would have modified License Condition D, Fire Protection Program, by withdrawing the commitments in REC–119 and REC–120 to implement certain plant modifications as stated in License Condition Paragraph 3.D.(3)(b), due to the fact that they are not necessary to meet the performance requirements of the risk-informed fire protection standard.

This proposed amendment was noticed in the **Federal Register** on June 7, 2016 (81 FR 36605). By letter dated August 18, 2016 (ADAMS Accession No. ML16231A512), the licensee withdrew its license amendment application.

Dated at Rockville, Maryland, this 24th day of August 2016.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Plant Licensing Branch IV–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–20807 Filed 8–29–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2016–0181]

Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Update Schedule for Updated Final Safety Analysis Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a January 29, 2016, application from Exelon Generation Company, LLC (Exelon), the licensee for Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2, for Renewed Facility Operating License Nos. DPR–53 and DPR–60, which requested an exemption from the updated final safety analysis report (UFSAR) update schedule requirements in the NRC's regulations. The NRC staff reviewed this request and is granting an exemption from the requirement that an update to the UFSAR be submitted 6 months after the refueling outage for each unit. The exemption allows the update to the CCNPP UFSAR to be submitted within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal.

DATES: The exemption was issued on August 18, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0181 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0181. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1030, email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The CCNPP is a two-unit plant, both units of which share an UFSAR. A strict interpretation of the language contained in 50.71(e)(4) of title 10 of the *Code of Federal* Regulations (10 CFR), would require Exelon to update this single UFSAR within 6 months after each unit's refueling outage. In August 1992, the NRC promulgated a rule change entitled "Reducing the Regulatory Burden on Nuclear Licensees," which affected 10 CFR 50.71(e)(4). This rule change was published in the **Federal Register** on August 31, 1992 (57 FR 39358), with an effective date of October 1, 1992, and was intended to provide a reduction in regulatory burden by, in part, providing licensees with the option to submit UFSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. However, when a single UFSAR is shared between the units of a multi-unit plant and those units have staggered refueling outages (*i.e.,* one unit a year on alternating years), as is the case with CCNPP, 10 CFR 50.71(e)(4) has the net effect of still requiring that the UFSAR be updated annually. Therefore, as written, the burden reduction provided by 10 CFR 50.71(e)(4) of providing licensees with the option to submit UFSAR updates each refueling outage instead of annually can only be realized by single-unit facilities, by multi-unit facilities that maintain separate UFSARs for each unit, or by multi-unit facilities that share a single UFSAR and have non-staggered refueling outages—none of which is the case for CCNPP. Consequently, since CCNPP is a multi-unit facility with a single shared USFAR and a staggered refueling outage schedule, the phrase "each refueling outage" in 10 CFR 50.71(e)(4) does not decrease the regulatory burden on the licensee as was the intent of the rule.

II. Request/Action

Pursuant to 10 CFR 50.12, "Specific exemptions," the licensee has, by application dated January 29, 2016 (ADAMS Accession No. ML16033A048), requested an exemption from the requirements of 10 CFR 50.71, "Maintenance of records, making of reports," paragraph (e)(4), related to the schedule for submitting periodic updates to the CCNPP UFSAR. Pursuant to 10 CFR 50.12(a), the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and when special circumstances are present.

III. Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR 50.71(e)(4) when: (1) The exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if the exemption is authorized by law. The exemption requested in this instance is authorized by law because no other prohibition of law exists to preclude the activities which would be authorized by the exemption. Additionally, even with the granting of the exemption, the underlying purpose of the regulation will continue to be served. The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the plant design and operation. The rule does not require that licensees review all of the information contained in the UFSAR for each periodic update. Rather, the intent of the rule is for licensees to update only those portions of the UFSAR that have been affected by licensee activities since the previous update. As required by 10 CFR 50.71(e)(4), UFSAR updates shall be submitted within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Submitting updates to the single shared CCNPP UFSAR 6 months after the CCNPP Unit 2 refueling outage as proposed and not exceeding 24 months between successive updates continues to meet the intent of the regulation from the perspective of regulatory burden reduction and maintaining UFSAR information up-to-date. Therefore, this exemption request is authorized by law.

No Undue Risk to the Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically update their UFSARs to assure that the UFSARs remain up-to-date such that they accurately reflect the plant design and operation. The NRC has determined by rule that an update frequency not exceeding 24 months between successive updates is acceptable for maintaining UFSAR content up-to-date. The requested exemption provides an equivalent level of protection to the existing requirements because it ensures that updates to the CCNPP UFSAR are submitted with no greater than 24 months between successive updates. The requested exemption also meets the intent of the rule for regulatory burden reduction. Additionally, based on the nature of the requested exemption and that updates will not exceed 24 months from the last submittal as described above, no new accident precursors are created by the exemption; therefore, neither the probability nor the consequences of postulated accidents are increased. In conclusion, the requested exemption does not result in any undue risk to the public health and safety.

Consistent With the Common Defense and Security

The requested exemption from 10 CFR 50.71(e)(4) would allow Exelon to submit its periodic updates to the CCNPP UFSAR within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal. Neither the regulation nor the proposed exemption thereto has any relation to security issues. Therefore, the common defense and security is not impacted by the exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. As explained above, the rule change promulgated in August 1992 (57 FR 39358; August 31, 1992) was intended to provide a reduction in regulatory burden by providing licensees with the option to submit UFSAR updates once per refueling outage, not to exceed 24 months between successive updates, instead of annually. However, as written, this burden reduction can only be realized by single-unit facilities, by multi-unit facilities that maintain separate UFSARs for each unit, or by multi-unit facilities that share a single UFSAR and have non-staggered refueling outages—none of which is the case for CCNPP. Since CCNPP is a dual-unit facility with a single shared UFSAR and staggered refueling outages, the phrase "each refueling outage" in 10 CFR 50.71(e)(4) does not decrease the regulatory burden on the licensee as was the intent of the rule. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements in these particular circumstances would not serve the underlying purpose of the rule and are not necessary to achieve the underlying purpose of the rule.

Environmental Considerations

With respect to its impact on the quality of the human environment, the NRC has determined that the issuance of the exemption discussed herein meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.71(e)(4)) is an action that is a categorical exclusion.

The NRC staff's determination that all of the criteria for this categorical exclusion are met is as follows:

I. 10 CFR 51.22(c)(25)(i): There is no significant hazards consideration.

Staff Analysis: The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the application. Therefore, there are no significant hazard considerations because granting the exemption would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

II. 10 CFR 51.22(c)(25)(ii): There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or significant increase in the amounts of any effluents that may be released offsite.

III. 10 CFR 51.22(c)(25)(iii): There is no significant increase in individual or cumulative public or occupational radiation exposure.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

IV. 10 CFR 51.22(c)(25)(iv): There is no significant construction impact.

Staff Analysis: Since the proposed action involves only a schedule change, which is administrative in nature, it does not involve any construction impact.

V. 10 CFR 51.22(c)(25)(v): There is no significant increase in the potential for or consequences from radiological accidents.

Staff Analysis: The proposed action involves only a schedule change, which is administrative in nature and does not impact the potential for or consequences from accidents.

VI. 10 CFR 51.22(c)(25)(vi): The requirements from which the exemption is sought involve scheduling requirements and other requirements of an administrative, managerial, or organizational nature.

Staff Analysis: The proposed action involves scheduling requirements and other requirements of an administrative, managerial, or organizational nature because it is associated with the submittal schedule requirements contained in 10 CFR 50.71(e)(4), which stipulate that revisions to the UFSAR must be filed annually or 6 months after each refueling outage provided the interval between successive updates does not exceed 24 months.

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

The NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the NRC hereby grants Exelon an exemption from the requirements of 10 CFR 50.71(e)(4) to allow Exelon to file its periodic updates to the CCNPP UFSAR within 6 months following the completion of each CCNPP Unit 2 refueling outage, not to exceed 24 months from the last submittal.

Dated at Rockville, Maryland, this 22nd Day of August 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–20804 Filed 8–29–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78667; File Nos. SR–BX–2016–037; SR–NASDAQ–2016–067; SR–Phlx–2016–58)

Self-Regulatory Organizations; NASDAQ BX, Inc.; The Nasdaq Stock Market LLC; NASDAQ PHLX LLC; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt Limit Order Protections

August 24, 2016.

I. Introduction

On June 24, 2016, NASDAQ BX, Inc. ("BX"), The Nasdaq Stock Market LLC ("Nasdaq"), and NASDAQ PHLX LLC ("Phlx," and together with BX and Nasdaq, "Exchanges") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to adopt Limit Order Protections ("LOP"). The proposed rule changes were published for comment in the **Federal Register** on July 13, 2016.[3] On July 28, 2016, each of the Exchanges filed an Amendment No. 1 to its proposed rule change (collectively "Amendments No. 1").[4] The Commission received no comment letters on the proposals. The Commission is publishing this notice to solicit comments on the Exchanges' proposals, as modified by Amendments No. 1, from interested persons and is approving the Exchanges' proposals, as modified by Amendments No. 1, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendments No. 1

Each of the Exchanges proposes to adopt LOP, which is a new mandatory feature designed to prevent certain Limit Orders at prices outside of pre-set standard limits ("LOP Limit") from being accepted by the System.[5]

As proposed, LOP would apply to all Quotes and Orders, including any modified Orders,[6] but would not apply to Market Orders, Market Maker Peg Orders, and Intermarket Sweep Orders ("ISOs").[7] According to the Exchanges, Market Maker Peg Orders are designed to assist Market Makers with meeting their quoting obligations, and Market Makers have more sophisticated infrastructures than other market participants and are able to manage their risk, particularly with respect to quoting, using tools that may not be available to other market participants.[8] Moreover, according to the Exchanges, the ISO designation on an order presumes that the market participant has satisfied its obligation to route to all protected quotes with a price that is superior to the limit price of the ISO.[9]

As proposed, LOP would be operational each trading day but would not be operational during trading halts and pauses.[10] On Nasdaq, LOP also would not be operational for orders designated for the opening, re-opening, and closing crosses and initial public offerings.[11] According to Nasdaq, the opening, re-opening, closing, and initial public offering processes already have their own price protections, and these processes involve certain price discovery features that are important in arriving at the best price.[12]

As proposed, LOP would reject incoming Limit Orders that exceed the LOP Reference Threshold.[13] The LOP Reference Threshold for buy orders would be the LOP Reference Price (*i.e.*, the current National Best Offer) plus the applicable LOP Limit and the LOP Reference Threshold for sell orders would be the LOP Reference Price (*i.e.*, the current National Best Bid) minus the applicable LOP Limit.[14] The LOP Limit would be the greater of 10% of the LOP Reference Price or $0.50 for all securities across all trading sessions.[15] LOP would not apply if there is no established LOP Reference Price (*e.g.*, there is a one-sided quote), or if the National Best Bid, when used as the

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 78244 (July 7, 2016), 81 FR 45320 ("BX Notice"); 78246 (July 7, 2016), 81 FR 45332 ("Nasdaq Notice"); and 78245 (July 7, 2016), 81 FR 45337 ("Phlx Notice").

[4] Each of the Exchanges specified in its Amendment No. 1 that LOP would not apply if there is no established LOP Reference Price, or if the National Best Bid, when used as the LOP Reference Price, is equal to or less than $0.50. In addition, in its Amendment No. 1, Nasdaq clarified that it reserves the ability to temporarily disable LOP for certain securities in the event of extraordinary market conditions and explained the process for temporarily disabling LOP. Nasdaq also clarified that LOP would not be operational for orders designated for the re-opening cross, and further explained the existing protections for the Nasdaq opening, re-opening, and closing crosses and initial public offerings. Amendment No. 1 to the BX filing is available at *https://www.sec.gov/comments/sr-bx-2016-037/bx2016037-1.pdf.* Amendment No. 1 to the Nasdaq filing is available at *https://www.sec.gov/comments/sr-nasdaq-2016-067/nasdaq2016067-1.pdf* ("Nasdaq Amendment No. 1"). Amendment No. 1 to the Phlx filing is available at *https://www.sec.gov/comments/sr-phlx-2016-58/phlx201658-1.pdf.*

[5] *See* proposed BX Rule 4757(d); proposed Nasdaq Rule 4757(c); and proposed NASDAQ OMX PSX ("PSX") Rule 3307(f).

[6] The Exchanges state that if an order is modified, LOP would review the order anew and, if LOP is triggered, the modification would not take effect and the original order would be rejected. *See* BX Notice, *supra* note 3, at n.5; Nasdaq Notice, *supra* note 3, at n.4; and Phlx Notice, *supra* note 3, at n.4.

[7] *See* proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

[8] *See* BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338.

[9] *See* BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338. *See also* BX Rule 4703(j); Nasdaq Rule 4703(j); and PSX Rule 3301B(j) (discussing ISOs).

[10] *See* proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i).

[11] *See* proposed Nasdaq Rule 4757(c)(i) and Nasdaq Amendment No. 1, *supra* note 4.

[12] *See* Nasdaq Amendment No. 1, *supra* note 4.

[13] Specifically, a buy Limit Order would be rejected if the price of the Limit Order is greater than the LOP Reference Threshold and a sell Limit Order would be rejected if the price of the Limit Order is less than the LOP Reference Threshold. *See* proposed BX Rule 4757(d)(v); proposed Nasdaq Rule 4757(c)(v); and proposed PSX Rule 3307(f)(v).

[14] *See* proposed BX Rule 4757(d)(iii)–(iv); proposed Nasdaq Rule 4757(c)(iii)–(iv); and proposed PSX Rule 3307(f)(iii)–(iv).

[15] *See* proposed BX Rule 4757(d)(ii); proposed Nasdaq Rule 4757(c)(ii); and proposed PSX Rule 3307(f)(ii).

LOP Reference Price, is equal to or less than $0.50.[16]

LOP would be applicable on all protocols available on each of the Exchanges.[17] While each of the Exchanges intends to apply LOP system-wide, each reserves the ability to temporarily disable LOP for certain securities in the event of extraordinary market conditions in a certain symbol.[18]

Each of the Exchanges proposes to implement LOP within ninety days of the approval of its proposal and will issue an Equities Trader Alert in advance to inform market participants of the implementation date.[19]

III. Discussion and Commission Findings

The Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] Specifically, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the LOP mechanism will help the Exchanges to identify and reject mispriced Limit Orders, which will help prevent the execution of Limit Orders at unintended and potentially erroneous prices. The Commission also believes that the LOP mechanism will be specifically tailored to address the Limit Orders are not already subject to price protection mechanisms or other risk mitigation mechanisms.[22]

For the foregoing reasons, the Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with Section 6(b)(5) of the Act[23] and the rules and regulations thereunder applicable to national securities exchanges.

IV. Solicitation of Comments on Amendments No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 1 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Numbers SR–BX–2016–037, SR–NASDAQ–2016–067, and SR–Phlx–2016–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–BX–2016–037, SR–NASDAQ–2016–067, and SR–Phlx–2016–58. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filings also will be available for inspection and copying at the principal offices of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–BX–2016–037, SR–NASDAQ–2016–067, and SR–Phlx–2016–58 and should be submitted on or before September 20, 2016.

V. Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1

The Commission finds good cause to approve the proposed rule changes, as modified by Amendments No. 1, prior to the thirtieth day after the date of publication of Amendments No. 1 in the **Federal Register**. As described above,[24] the amendments provided more clarity to the proposals by stating that LOP would not apply if the National Best Bid, when used as the LOP Reference Price, is equal to or less than $0.50.[25] In addition, Nasdaq specified that its LOP would not be operational for orders designated for the re-opening cross,[26] and provided additional information regarding the existing protections for the Nasdaq opening, re-opening, and closing crosses and initial public offerings. Finally, Nasdaq clarified that, same as BX and Phlx, it would have the ability to temporarily disable LOP under certain circumstances.[27] The Commission believes that the amendments provided additional specificity and clarity, and provided consistency between the three proposals. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[28] to approve the proposed rule changes, as modified by Amendments No. 1, on an accelerated basis.

---

[16] *See* proposed BX Rule 4757(d)(i); proposed Nasdaq Rule 4757(c)(i); and proposed PSX Rule 3307(f)(i). *See also* Amendments No. 1, *supra* note 4.

[17] *See* BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338.

[18] Each of the Exchanges states that if LOP is temporarily disabled for a particular symbol, it would immediately notify market participants by sending an Equities Trader Alert. It would re-enable LOP as soon as is reasonably practicable and send an updated alert to notify participants that LOP was enabled. *See* BX Notice, *supra* note 3, at 45321; Nasdaq Amendment No. 1, *supra* note 4; and Phlx Notice, *supra* note 3, at 45338.

[19] *See* BX Notice, *supra* note 3, at 45321; Nasdaq Notice, *supra* note 3, at 45333; and Phlx Notice, *supra* note 3, at 45338. For a more detailed description of the proposed rule changes, *see* BX Notice, Nasdaq Notice, and Phlx Notice, *supra* note 3 and Amendments No. 1, *supra* note 4. *See also* proposed BX Rule 4757(d); proposed Nasdaq Rule 4757(c); and proposed PSX Rule 3307(f).

[20] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] For example, as noted above, Market Makers on the Exchanges have tools to manage their risks with respect to quoting, and Nasdaq's opening, re-opening, closing, and initial public offering processes already have their own price protections. *See supra* notes 8 and 12 and accompanying text.

[23] 15 U.S.C. 78f(b)(5).

[24] *See supra* note 4.

[25] The Commission notes that, in the original filings, each of the Exchanges stated that LOP would not apply "if the LOP Reference Price is less than the greater of 10% or $0.50." *See* BX Notice, *supra* note 3, at n.8; Nasdaq Notice, *supra* note 3, at n.8; and Phlx Notice, *supra* note 3, at n.7.

[26] The Commission notes that Nasdaq's original filing stated that LOP is not operational during trading halts or pauses. *See* proposed Nasdaq Rule 4757(c)(i).

[27] BX's and Phlx's ability to temporarily disable LOP and their processes for temporarily disabling LOP were described in their original filings. *See* BX Notice, *supra* note 3, at 45321 and Phlx Notice, *supra* note 3, at 45338.

[28] 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule changes (SR–BX–2016–037; SR–NASDAQ–2016–067; SR–Phlx–2016–58), as modified by Amendments No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20736 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of MarilynJean Interactive Inc.; Order of Suspension of Trading

August 26, 2016

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MarilynJean Interactive Inc. (CIK 0001504464) because of concerns about recent, unusual and unexplained market activity in the company's common stock. MarilynJean Interactive Inc. is a Nevada corporation with its principal place of business located in Henderson, Nevada. Its stock is quoted on OTC Link (previously "Pink Sheets"), operated by OTC Markets Group Inc., under the ticker: MJMI.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, It Is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 26, 2016, through 11:59 p.m. EDT on September 9, 2016.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–20924 Filed 8–26–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78662; File No. SR–NYSEArca–2016–119]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc.

August 24, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 17, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Second Amended and Restated Certificate of Incorporation (the "ICE Certificate") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to increase ICE's authorized share capital, and to make other, non-substantive changes. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments would revise the ICE Certificate[4] to increase the total number of authorized shares of ICE common stock, par value $0.01 per share ("Common Stock"), and make other, non-substantive changes. More specifically, the Exchange proposes to make the following amendments to the ICE Certificate:

- In Article IV, section A, the total number of shares of stock that ICE is authorized to issue would be changed from 600,000,000 to 1,600,000,000 shares, and the portion of that total constituting Common Stock would be changed from 500,000,000 to 1,500,000,000 shares.
- In Article V, section A.5, the reference to "this Section A of ARTICLE VI" would be corrected to refer to "this Section A of ARTICLE V".
- References to the "Second Amended and Restated Certificate of Incorporation" would be changed throughout to refer to the "Third Amended and Restated Certificate of Incorporation", and related technical and conforming changes would be made to the recitals and signature page of the ICE Certificate.

The proposed amendments to the ICE Certificate were approved by the board of directors of ICE ("ICE Board") on August 1, 2016. The Exchange proposes that the above amendments to the ICE Certificate would be effective when filed with the Department of State of Delaware, which would not occur until approval of the amendments by the stockholders of ICE is obtained at a Special Meeting of Stockholders on October 12, 2016.

The trading price of ICE's Common Stock has risen significantly since ICE's initial public offering in 2005,[5] and the ICE Board believes that such price appreciation may impact the liquidity of ICE's Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the ICE Board approved pursuing a 5-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, four shares of Common Stock for each share of Common Stock held by such holder (the "Stock Dividend"). The ICE Board's approval of the Stock Dividend was contingent upon Commission and ICE stockholder approval of the proposed amendments to the ICE Certificate.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE MKT LLC. ICE is a publicly traded company listed on the Exchange's affiliate New York Stock Exchange LLC. The Exchange's affiliates, New York Stock Exchange LLC and NYSE MKT LLC, have each submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–57 and SR–NYSEMKT–2016–80.

[5] The closing price of ICE's Common Stock on July 29, 2016, the trading date prior to the ICE Board vote to approve the proposal, was $264.20. The price of ICE's Common Stock at its initial public offering on November 16, 2005, was $26.00.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds ICE's authorized but unissued shares of Common Stock. The proposed rule change would increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend.

The proposed changes would not alter the limitations on voting and ownership set forth in section V of the ICE Certificate. Such limitations were introduced at the time of ICE's acquisition of the Exchange, to "minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[7] in general, and section 6(b)(1) of the Exchange Act,[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in section V of the ICE Certificate, and so the proposed changes would not enable a person to "improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[9]

For similar reasons, the proposal is consistent with section 6(b)(5) of the Exchange Act,[10] because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that approval of the proposal would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because by increasing ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of ICE.

The Exchange believes that amending Article V, section A.5, to correct the reference to "this Section A of ARTICLE VI" to refer to "this Section A of ARTICLE V" would reduce potential confusion that may result from having an incorrect reference in the ICE Certificate. Replacing such incorrect reference would further the goal of transparency and add clarity to the ICE Certificate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the number of authorized shares of Common Stock and shares of capital stock of the Exchange's ultimate parent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–119 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2016–119. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–119, and should be submitted on or before September 20, 2016.

---

[6] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE– 2013–42; SR–NYSEMKT–2013–50; and SR–NYSEArca–2013–62), at 51760. ICE was previously named IntercontinentalExchange Group, Inc. *See* Securities Exchange Act Release No. 72157 (May 13, 2014), 79 FR 28794 (May 19, 2014) (SR–NYSEArca–2014–52).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] *See* Securities Exchange Act Release No. 70210, *supra* note 6, at 51760.

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20731 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78660; File No. SR–FINRA–2016–034]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Effective Date of SR–FINRA–2016–028

August 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the effective date of SR–FINRA–2016–028 until October 24, 2016.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 22, 2016, FINRA filed a proposed rule change (SR–FINRA–2016–028)[4] to amend Rule 6121.01 (Trading Pauses) to clarify the operation of the Regulation NMS Plan to Address Extraordinary Volatility ("Plan")[5] regarding the short period of time (generally up to three milliseconds) following the resumption of trading after a Trading Pause or Regulatory Halt and before the Price Bands are received from the Processor for securities that are subject to the Plan.

Specifically, SR–FINRA–2016–028 provided that, following a Trading Pause or Regulatory Halt in an NMS Stock that is subject to the Plan, a member may resume trading otherwise than on an exchange if trading has commenced on the primary listing exchange (or on another national securities exchange in the case of the resumption of trading following a ten-minute trading pause) and either: (1) The member has received the Price Bands from the Processor; or (2) if immediately following a Trading Pause or Regulatory Halt the member has not yet received the Price Bands from the Processor, the member has calculated an upper price band and lower price band consistent with the methodology provided for in Section V of the Plan and ensures that any transactions prior to the receipt of the Price Bands from the Processor are within the ranges provided for pursuant to the Plan, consistent with Section VI(A)(1) of the Plan.

In SR–FINRA–2016–028, FINRA established an effective date of August 22, 2016 for the proposed rule change. FINRA is filing the instant proposal to extend the effective date until October 24, 2016 to permit members additional time to make any technological changes necessary in connection with SR–FINRA–2016–028.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date of the proposed rule change will be August 19, 2016 to extend the effective date of SR–FINRA–2016–028 until October 24, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[7] in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule change is designed to provide members additional time to make any technological changes necessary in connection with SR–FINRA–2016–028, which was designed to better implement the goals of the Plan approved by the Commission as reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010. Thus, FINRA believes that the proposed rule change seeks to help ensure that the goals of the Plan are met.

---

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78435 (July 28, 2016), 81 FR 51239 (August 3, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–028).

[5] Unless otherwise specified, the capitalized terms used herein have the same meanings as set forth in the Plan.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change provides members additional time to take measures to ensure that their trading activity is in compliance with FINRA Rule 6190 and the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Commission received one comment letter in response to the Notice of Filing and Immediate Effectiveness of SR–FINRA–2016–028.[8] FIF members expressed agreement with the intent of the rule change, but stated that members were concerned regarding the effective date of SR–FINRA–2016–028, particularly given the numerous regulatory initiatives currently scheduled for the third and fourth quarters of 2016. Among other things, FIF stated that feedback from its members indicated that three to four months would be a sufficient timeframe for technology changes. FINRA believes that the instant proposal, which provides a total of three months from the date of filing of SR–FINRA–2016–028, provides members with sufficient time to make any technological changes necessary in connection with SR–FINRA–2016–028.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that FINRA may implement the proposed rule change immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will immediately extend the operative date of SR–FINRA–2016–028 from August 22, 2016 to October 24, 2016, which will allow FINRA members additional time to make any technological changes necessary in connection with SR–FINRA–2016–028. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–034 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–034. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–034 and should be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20741 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[8] *See* Letter from Christopher W. Bok, Financial Information Forum, to Brent J. Fields, Secretary, Commission, dated August 11, 2016 ("FIF"), available at *https://www.sec.gov/comments/sr-finra-2016-028/finra2016028-1.pdf*.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78664; File No. SR–NYSE–2016–40)

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Text of Current Rule 8313; Amending Rules Relating to the Imposition of Temporary and Current Cease and Desist Orders to Correspond to Recent Amendments by FINRA; and Making Certain Technical and Conforming Changes to Rule 9310

August 24, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 12, 2016, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) amendments to Rule 8313 relating to the Exchange's ability to publicly release disciplinary complaints, decisions and other information, modeled on the text of FINRA Rule 8313; (2) amendments to Rules 9120, 9268, 9269, 9270, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, 9830, 9840, 9850, and 9860 and a new Rule 9291 relating to temporary or permanent cease and desist orders to correspond to recent amendments by FINRA to its Rule 9100, 9200, 9550, and 9800 Series; and (3) certain technical and conforming changes to Rule 9310. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes:

(1) Amendments to Rule 8313 (Release of Disciplinary Decisions) relating to the Exchange's ability to publicly release disciplinary complaints, decisions and other information, modeled on the text of FINRA Rule 8313;[4]

(2) amendments to Rules 9120, 9268, 9269, 9270, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, 9830, 9840, 9850, and 9860 and a new Rule 9291 relating to temporary or permanent cease and desist orders to correspond to recent amendments by FINRA to its Rule 9100, 9200, 9550, and 9800 Series; and

(3) certain technical and conforming changes to Rule 9310.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting the FINRA disciplinary rules, the NYSE retained its long-standing practice of publishing all final disciplinary decisions, other than minor rule violations, on its Web site and did not adopt the text of FINRA Rule 8313, which provides that disciplinary complaints and decisions that meet certain criteria will be either published or made available upon request.[8] At the time, the Exchange was not directly performing enforcement-related regulatory functions, having entered into a Regulatory Services Agreement with FINRA in 2010 to perform those functions, among others, on the Exchange's behalf.[9]

In adopting the FINRA disciplinary rules, the Exchange adopted FINRA's rules and procedures for imposing temporary or permanent cease and desist orders. In particular, the Exchange adopted FINRA Rule 8310 as NYSE Rule 8310, which, among other things, allows the Exchange to impose a temporary or permanent cease and desist order.[10] NYSE Rule 9290, based on FINRA Rule 9290, provides for expedited disciplinary proceedings.[11] Rule 9556, based on FINRA Rule 9556, provides procedures and consequences for a failure to comply with temporary and permanent cease and desist orders.[12] The Exchange also adopted the FINRA Rule 9800 Series, which sets forth the procedures for issuing temporary cease and desist orders, as the NYSE Rule 9800 Series.[13]

In 2015, FINRA adopted a series of amendments to its substantive and procedural rules governing temporary and permanent cease and desist orders.[14] In particular, FINRA amended its Rule Series 9800 to, among other things, revise the evidentiary standard for finding a violation to "a showing of likelihood of success on the merits." [15] FINRA also amended its Rules 9120,

---

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] References to rules are to NYSE rules unless otherwise indicated.

[5] In addition, the Exchange proposes the following technical and conforming changes to the harmonized rules: (1) Substituting the term "member organization" for "member" (*see* note 23, *infra*); (2) substituting the term "Exchange" for "FINRA"; (3) changing certain cross-references to FINRA rules to cross-references to Exchange rules; (4) substituting a reference to the Exchange's Chief Regulatory Officer for a reference to a senior officer at FINRA; and (5) changing certain references to Adjudicators to make them consistent with references to Adjudicators throughout the Rule 9000 Series.

[6] *See* Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) ("2013 Notice"), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) ("2013 Approval Order"), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] 2013 Approval Order, 78 FR at 15395.

[9] *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729, 36729 (June 28, 2010) (SR–NYSE–2010–46).

[10] 2013 Notice, 78 FR at 5221.

[11] 2013 Notice, 78 FR at 5230. Under Rule 9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 9810 or a temporary cease and desist order, hearings are required to be held and decisions rendered at the earliest possible time. *See id.*

[12] *Id.* at 5232.

[13] *Id.* at 5233.

[14] *See* Securities Exchange Act Release Nos. 75333 (June 30, 2015), 80 FR 38783 (July 7, 2015) (SR–FINRA–2015–019) ("2015 FINRA Notice"), 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015) (SR–FINRA–2015–019) ("2015 FINRA Filing").

[15] *Id.* at 48379.

9268, 9269, 9270, 9291,[16] 9551, 9552,[17] 9554, 9555, 9556, 9557, 9558, 9559, 9810,[18] 9830, 9840, 9850 and 9860 to adopt a new expedited proceeding for failure to comply with a temporary cease and desist order or a permanent cease and desist order; harmonize the provisions governing how documents are served in temporary cease and desist proceedings and related expedited proceedings; clarify the process for issuing permanent cease and desist orders; ease FINRA's administrative burden in temporary cease and desist proceedings; and make conforming changes throughout its Code of Procedure.[19]

On January 1, 2016, the Exchange reintegrated certain regulatory functions previously performed on its behalf by FINRA.[20] Among other things, the Exchange now directly performs enforcement-related regulatory functions, including investigating potential violations of Exchange rules, and bringing enforcement actions and conducting disciplinary proceedings arising out of such investigations.

Proposed Rule Change

Amendments to Rule 8313 Governing Release of Disciplinary Complaints, Decisions and Other Information Based on FINRA Rule 8313

Rule 8313 currently provides that the Exchange shall publish a copy of final disciplinary action under the Rule 9000 Series, other than minor rule violations, on its Web site. The Exchange proposes to restructure Rule 8313 and add four subsections and text modeled on FINRA Rule 8313, as described below. The scope of proposed Rule 8313 would be limited to publication of materials relating to the disciplinary process set forth in the Rule 8000 and 9000 Series. In that regard, the Exchange has determined not to adopt the FINRA rule in all respects.

General Standards

The Exchange proposes to add a new subsection (a) to Rule 8313 entitled "General Standards" and text that would set forth general standards for the release to the public of disciplinary complaints, decisions or information.

Proposed Rule 8313(a)(1) would retain, as modified, the current text of Rule 8313. The word "publish" would be replaced with "release to the public" to conform to the FINRA rule. The phrase "final disciplinary action" would be deleted as unnecessary in light of the more detailed provisions throughout the proposed Rule. The proposed Rule would provide that the Exchange shall release to the public a copy of and, at the Exchange's discretion, information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in proposed Rule 8313(e) under the Rule 9000 Series, other than minor rule violations, on its Web site. Proposed Rule 8313(a)(1) would also provide that, in response to a request, the Exchange shall also release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in proposed Rule 8313(e). These proposed amendments are modeled on FINRA Rule 8313(a)(1) and would be substantially similar to the FINRA rule.

Proposed Rule 8313(a)(2) provides that the Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Exchange pursuant to the Rule 9520 Series that will be filed with the Securities and Exchange Commission ("SEC" or "Commission") and any temporary cease and desist order or decision issued by the Exchange pursuant to the Rule 9800 Series. Proposed Rule 8313(a)(2) is modeled on FINRA Rule 8313(a)(2) but would substitute the term "Exchange" for "FINRA."

Proposed Rule 8313(a)(3) provides that the Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to Rules 9552, 9554,[21] 9555, 9556, and 9558, as well as information with respect to any suspension imposed pursuant to Rule 9557. Proposed subsection (a)(3) would also provide that the Exchange shall release to the public a copy of, and information with respect to, any decision issued pursuant to Rule 9559 that constitutes final Exchange action. Further, the proposed subsection would provide that the Exchange shall release to the public information with respect to the summary suspension or expulsion of a member organization or the summary revocation of the registration of a covered person for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 8320. Proposed Rule 8313(a)(3) is modeled on FINRA Rule 8313(a)(3) but would (1) exclude failure to pay Exchange fees from its scope;[22] (2) substitute the term "Exchange" for "FINRA"; and (3) use the terms "member organization" and "covered person" rather than "member" and "person associated with a member," which have different meanings under FINRA and Exchange rules.[23]

Proposed Rule 8313(a)(4) provides that the Exchange may release to the public a copy of, and information with respect to, any decision or notice issued pursuant to the Rule 9600 Series, and any other decision appealable to the SEC under Exchange Act Section 19(d). Proposed Rule 8313(a)(4) is modeled on FINRA Rule 8313(a)(5). FINRA Rule 8313(a)(5) also contains cross references to FINRA Rule 6490 and the FINRA Rule 9700 Series. FINRA Rule 6490

---

[16] FINRA also amended Rules 9348 (Powers of the National Adjudicatory Council on Review) and 9351 (Discretionary Review by FINRA Board). The Exchange did not adopt either rule and instead retained the substance of its appeals process when it adopted the Rule 8000 and 9000 Series in 2013. *See* 2013 Approval Order, 78 FR at 15394.

[17] FINRA also amended Rule 9553, which concerns failure to pay fees, dues, assessments or other charges. The Exchange did not adopt FINRA Rule 9553 in 2013. *See* 2013 Approval Order, 78 FR at 15399.

[18] FINRA also amended Rule 9820 (Appointment of Hearing Officers and Hearing Panel) to expand the pool of persons eligible to serve on hearing panels in order to ease certain administrative burdens on FINRA's Office of Hearing Officers. *See* 2015 FINRA Filing, 80 FR at 48380. The Exchange is not adopting these changes.

[19] *Id.* at 48379.

[20] *See* Securities Exchange Act Release No. 75721 (Aug. 18, 2015), 80 FR 51334 (August 24, 2015) and Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460 (November 19, 2015) (SR–NYSE–2015–35).

[21] FINRA's version of Rule 8313 also includes a reference to FINRA Rule 9553, which relates to failure to pay FINRA dues, fees and other charges. In 2013, the Exchange adopted the text of FINRA Rule 8320, which addresses the non-payment of fines and monetary sanctions, but did not adopt FINRA Rule 9553. *See* note 17, *supra.* Instead, the Exchange continued to use Rule 309, which relates to failure to pay Exchange fees and other amounts due to the Exchange. *See* 2013 Approval Order, 78 FR at 15399. Inasmuch as the scope of the proposed rule change would be limited to publication of materials relating to the disciplinary process under the Rule 8000 and 9000 Series, the Exchange proposes to include Rule 8320 but not Rule 309 within the scope of proposed Rule 8313(a)(3).

[22] *See* note 21, *supra.*

[23] Under FINRA Rules, a "member" means an individual, partnership, corporation or other legal entity admitted to membership in FINRA under Articles III and IV of the FINRA By-Laws. *See* FINRA Rule 0160(b)(10). Article III, Sec. 1(a) generally limits membership to registered brokers, dealers, municipal securities brokers or dealers, or government securities brokers or dealers. NYSE's equivalent term is "member organization." *See* Rule 2(b)(i) (defining "member organization" as a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange). Under Rule 2(a), the term "member" means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof. A "member" is not a registered broker-dealer and does not have employees; only member organizations have employees. For purposes of the proposed amendments to its disciplinary rules, the Exchange proposes to continue using the phrase "covered person" to indicate employees of a member organization. *See* 2013 Notice, 78 FR at 5219.

(Processing of Company-Related Actions) applies to issuers of non-exchange listed equity and debt securities quoted on the OTC marketplace. FINRA's Rule 9700 Series provides redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA. FINRA Rule 6490 has no analogue in the Exchange's Rules. The Exchange does not propose to include Rule 18, which addresses compensation in connection with an Exchange system failure, within the scope of Rule 8313. As noted above, the Exchange has determined to limit the scope of Rule 8313 to publication of materials relating to the disciplinary process under the Rule 8000 and 9000 Series.[24] The Exchange would also substitute the term "Exchange" for "FINRA."[25]

Release Specifications

The Exchange proposes to add a new subsection (b) to Rule 8313 entitled "Release Specifications" modeled on FINRA Rules 8313(b)(1) and (2).

Proposed Rule 8313(b)(1) provides that copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of the proposed Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. The proposed Rule would be the same as FINRA Rule 8313(b)(1) except that the proposed Rule would substitute the term "Exchange" for "FINRA."

Proposed Rule 8313(b)(2) provides that copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of the proposed Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC. The proposed Rule would be the same as FINRA Rule 8313(b)(2) except that the proposed Rule would substitute the term "Exchange" for "FINRA."

Discretion To Redact Certain Information or Waive Publication

The Exchange has determined that, subject to limited exceptions, disciplinary information should be released to the public in unredacted form. The Exchange proposes to add a new subsection (c) to Rule 8313 entitled "Discretion to Redact Certain Information or Waive Publication," modeled on FINRA Rule 8313(c)(1) and (2).

With respect to the limited exceptions, proposed Rule 8313(c)(1) would provide that the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns. The proposed Rule would be the same as FINRA Rule 8313(c)(1) except that the proposed Rule would substitute the term "Exchange" for "FINRA."

Similarly, proposed Rule 8313(c)(2) provides that, notwithstanding paragraph (a) of the proposed rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. The proposed Rule would be the same as FINRA Rule 8313(c)(1) [sic] except that the proposed Rule would substitute the term "Exchange" for "FINRA."

Notice of Appeals of Exchange Decisions

The Exchange proposes to add a new subsection (d) to Rule 8313 entitled "Notice of Appeals of Exchange Decisions to the SEC" modeled on FINRA Rule 8313(d). Proposed Rule 8313(d) provides that the Exchange must provide notice to the public when a disciplinary decision of the Exchange is appealed to the SEC and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission. The proposed Rule would be the same as FINRA Rule 8313(d)(1) except that the proposed Rule would substitute the term "Exchange" for "FINRA."

Definitions

Finally, the Exchange proposes to add a new subsection (e) to Rule 8313 entitled "Definitions." Proposed Rule 8313(e) would set forth definitions of the terms "disciplinary complaint" and "disciplinary decision" as used in the Rule, modeled on the definitions contained in FINRA Rule 8313(e).

First, Rule 8313(e)(1) would define the term "disciplinary complaint" to mean any complaint issued pursuant to the Rule 9200 Series. The proposed text is identical to FINRA Rule 8313(e)(1).

Second, Rule 8313(e)(2) would define the term "disciplinary decision" to mean any decision issued pursuant to the Rule 9000 Series, including, decisions issued by a Hearing Officer, Hearing Panel, Extended Hearing Panel, or the Board of Directors, and orders accepting offers of settlement, and Letters of Acceptance, Waiver and Consent. Under proposed subsection (e)(2), the term would not include decisions issued pursuant to the Rule 9550 Series, Rule 9600 Series, or Rule 9800 Series, or decisions, notifications, or notices issued pursuant to the Rule 9520 Series, which are addressed by paragraphs (a)(2), (a)(3) and (a)(4) of the proposed Rule. Finally, Rule 8313(e)(2) provides that minor rule violation plan letters issued pursuant to Rules 9216 and 9217 are not subject to the proposed Rule. The proposed Rule would be the same as FINRA Rule 8313(e)(2) except that the proposed Rule would substitute the term "Exchange" for "FINRA."

* * * * *

The Exchange believes that greater access to information regarding disciplinary actions provides valuable guidance and information to member organizations, associated persons, other regulators, and investors.[26] Further, releasing detailed disciplinary information to the public can serve to deter and prevent future misconduct and improve overall business standards in the securities industry as well as allowing investors to consider firms' and representatives' disciplinary histories when considering whether to engage in business with them.[27] Publishing more detailed information than the exchange currently does would also allow member organizations to utilize that information to educate associated persons as to compliance matters, highlight potential violations and related sanctions, as well as inform the firms' compliance procedures involving similar business lines, products, or industry practices. Finally, the Exchange believes that any member organization or individual facing allegations of rule violations would also have access to more information to gain greater insight on related facts and sanctions.[28]

---

[24] For the same reasons, the Exchange also does not propose to adopt FINRA Rule 8313(a)(6), which provides that that FINRA may release to the public a copy of, and information with respect to, any complaint, decision, order, notification or notice issued under FINRA rules, where the release of such information is deemed by FINRA's CEO (or such other senior officer as the CEO may designate) to be in the public interest, in such format as he or she finds appropriate.

[25] The Exchange is not proposing to adopt rule text similar to FINRA Rule 8313(a)(4), which provides that FINRA may release to the public a copy of, and information with respect to, any decision or notice issued pursuant to NASD Rules 1015 and 1016 governing appeals from adverse membership and continuing membership decisions. As noted above, the Exchange has determined to limit the scope of Rule 8313 to publication of materials relating to the disciplinary process under the Rule 8000 and 9000 Series.

[26] *See* Securities Exchange Act Release Nos. 69178 (March 19, 2013), 78 FR 17975, 17976 (March 25, 2013) (SR–FINRA–2013–018) and 69825 (June 21, 2013), 78 FR 38771, 38775 (June 27, 2013) (SR–FINRA–2013–018).

Harmonization With FINRA Rules Relating to Temporary or Permanent Cease and Desist Orders

The Exchange also proposes to harmonize its disciplinary rules and procedures relating to the imposition of temporary and permanent cease and desist orders with approved FINRA amendments. To effectuate these changes, the Exchange proposes the following amendments to Rules 9120, 9268, 9269, 9270, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, and 9830, 9840, 9850, and 9860. The Exchange also proposes to adopt a new Rule 9291 based on FINRA's recently adopted Rule 9291.

- The Exchange proposes to amend the Rule 9120 definitions applicable to the Rule 9000 Series, as follows:
    - The Exchange proposes to amend the definition of "Hearing Panel" in Rule 9120(s) to encompass a Hearing Panel constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.
    - The Exchange proposes to amend the definition of "Interested Staff" in Rule 9120(t)(A) to encompass any staff that issues a petition under the Rule 9000 Series.[29]
    - The Exchange proposes to amend the definition of "Panelist" in Rule 9120(v) to encompass the use of the term in the Rule 9550 Series and the Rule 9800 Series.
    - Finally, the Exchange proposes to amend the definition of "Respondent" in Rule 9120(y) to provide that in a proceeding governed by the Rule 9800 Series, the term "Respondent" means a member organization or covered person that has been served with a notice initiating a cease and desist proceeding.
- Rule 9268 sets forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review. The Exchange proposes to amend Rule 9268(b), which sets forth the contents of a panel decision, by adding a new subsection (7), providing that when the sanctions include a permanent cease and desist order, the decision should include a statement that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order. The proposed change is identical to that recently adopted by FINRA to its version of Rule 9268.
- Rule 9269 governs the process for the issuance and review of default decisions when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. The Exchange proposes to amend Rule 9269(a), governing issuance of default decisions, to add a new subsection (4) that provides that the Office of Hearing Officers shall provide a copy of the default decision to each member organization with which a Respondent is associated. The proposed change is identical to recently adopted FINRA Rule 9269(a)(4), except for conforming references to member organizations.
- Rule 9270 provides a settlement procedure for a Respondent who has been notified that a proceeding has been instituted against him or her. The Exchange proposes two amendments to this Rule. First, the Exchange would amend Rule 9270(c), which details the content and signature requirements for offers of settlement, to add a new subsection (6) providing that, if applicable, the offer should describe in detail a proposed permanent cease and desist order to be imposed that is consistent with the requirements of proposed Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order. This proposed amendment is substantially the same as FINRA Rule 9270(c)(6) as amended in the 2015 FINRA Filing.[30]

Second, the Exchange proposes to add the phrase "including, if applicable, a permanent cease and desist order" to Rule 9270(f)(1), governing uncontested offers of settlement, and a sentence to Rule 9270(f)(3) providing that Enforcement shall provide a copy of an issued order of acceptance to each member organization with which a Respondent is associated. The proposed amendments are identical to FINRA Rules 9270(e)(1) and 9270(e)(3), respectively, except for conforming references to the Exchange's Enforcement group and member organizations.

- The Exchange proposes to amend the notice and service requirements for expedited proceedings under the Rule 9550 Series, by providing for service upon counsel and service by email. Specifically, the Exchange proposes to make amendments to subsection (b) of the following Rules, consistent with recent changes to the counterpart FINRA rules, regarding service on counsel or other representative and the requirements for service by email:
    - The Exchange proposes to add a clause to the first sentence of subsection (b) of Rule 9551 (Failure to Comply with Public Communication Standards), which governs expedited proceedings relating to a member organization's departure from the public communication standards of Rule 2210, providing that Regulatory Staff shall alternatively serve counsel representing the member organization, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization with the required notice under the Rule and that the notice can also be provided by email.

The Exchange proposes to delete the sentence, "When counsel for the member organization or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134," and add a sentence to the end of subsection (b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with subsections (a)(1) and (3) and (b)(2) of Rule 9134.

---

[27] Release No. 69178, 78 FR at 17976.

[28] *See id.*

[29] In 2015, the Exchange amended and streamlined the definition of "Interested Staff" in Rule 9120(t) and, as a result, the NYSE and FINRA definitions of "Interested Staff" are organized differently. However, both definitions encompass supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in a matter. *See* Securities Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460, 72462 (November 19, 2015) (June 27, 2013) (SR–NYSE–2015–35). The proposed change to Rule 9120(t)(A) would bring any staff that issues a petition under the Rule 9000 Series within the ambit of the definition, and thus remain consistent with the FINRA definition, as amended in the 2015 FINRA Filing.

[30] The Exchange also proposes a non-substantive amendment at the end of Rule 9270(c)(4) to delete the word "and" and a non-substantive amendment at the end of Rule 9270(c)(5) to delete a period, add a semicolon, and add the word "and."

The Exchange would also add text providing that the papers served on counsel for a member organization, or other person authorized to represent others under Rule 9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with Rule 9134(a)(1) and (3). Finally, the Exchange would add a sentence specifying that service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete;

○ Rule 9552 (Failure to Provide Information or Keep Information Current), which sets forth procedures for expedited proceedings relating to a member organization or covered person's failure to provide information or keep information current, would be amended by adding a clause to the first sentence of subsection (b) providing that Regulatory Staff shall alternatively serve counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person with the required notice under the Rule and that the notice can also be provided by email.

The Exchange proposes to delete the sentence, "When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134," and add a sentence to the end of Rule 9552(b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134.

Further, the proposed rule text would provide that papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. The proposed amendment would specify that papers served on counsel for a member organization or covered person, or other person authorized to represent others under Rule 9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with Rule 9134(a)(1) and (3).

Finally, the proposed amendment would provide that service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete;

○ The Exchange proposes to amend Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution), which governs expedited proceedings relating to noncompliance with an arbitration award, settlement agreement, or restitution order, by adding a clause to the first sentence of subsection (b) providing that Regulatory Staff shall alternatively serve counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person with the required notice under the Rule and that the notice can also be provided by email.

The Exchange would also delete the sentence, "When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134," and add a sentence to the end of Rule 9554(b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Further, the proposed amendment would specify that papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134.

The proposed amendment would also specify that papers served on counsel for a member organization or covered person, or other person authorized to represent others under Rule 9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134.

Finally, the proposed amendment would provide that service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete;

○ The Exchange proposes to add a clause to the first sentence of subsection (b) of Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), which governs expedited proceedings in connection with the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange, providing that Exchange staff shall alternatively serve counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person with the required notice under the Rule and that the notice can also be provided by email.

The Exchange would also delete the sentence, "When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then Exchange staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134," and add a sentence to the end of Rule 9554(b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134.

Further, the proposed amendment would specify that papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and

(3) and (b)(1) of Rule 9134. The proposed amendment would also specify that the papers served on counsel for a member organization or covered person, or other person authorized to represent others under Rule 9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with Rule 9134(a)(1) and (3).

Finally, the proposed amendment would provide that service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete;

○ The Exchange proposes to amend subsection (b) of Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders), which governs expedited proceedings relating to noncompliance with a temporary or permanent cease and desist order, to add the word "email" to the list of service methods in the first sentence. The proposed Rule would therefore permit Regulatory Staff to serve the member organization or covered person subject to a notice issued under the Rule (or upon counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept) by email in addition to overnight courier or personal delivery.

The Exchange would also add a sentence to subsection (b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Further, the proposed amendment would specify that papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. The proposed amendment would also specify that the papers served on counsel for a member organization or covered person, or other person authorized to represent others under Rule 9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with Rule 9134(a)(1) and (3).

Finally, the Exchange proposes to amend the last sentence of subsection (b) to provide that service is complete upon "sending" rather than "mailing", which word would be deleted; adding the phrase "email or" to the list of service methods; and adding an exception clause providing that "except that, where duplicate service is required, service is complete upon sending the duplicate service";

○ Rule 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Organization Experiencing Financial or Operational Difficulties), which allows the Exchange to issue a notice directing a member organization to comply with the provisions of Rule 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), or 4130 (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties), or otherwise directing it to restrict its business activities, would be amended to add a clause to the first sentence of subsection (b) providing Exchange staff shall alternatively serve counsel representing the member organization, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization and that the notice can also be provided by email.

The Exchange would also add a sentence to subsection (b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Further, the proposed amendment would specify that papers served on counsel for a member organization or other person authorized to represent others under Rule 9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134.

Finally, the last sentence of subsection (b) would be amended to reflect that service is complete upon "sending" rather than "mailing", which word would be deleted; adding the phrase "email or" to the list of service methods; and adding an exception clause providing that "except that, where duplicate service is required, service is complete upon sending the duplicate service"; and

○ Subsection (b) of Rule 9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act), which allows the Exchange's Chief Regulatory Officer to provide written authorization to Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Act, would be amended by to add a clause to the first sentence providing Exchange staff shall alternatively serve counsel representing the member organization, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person and adding "email" to the list of service methods.

The Exchange would also add a sentence to subsection (b) providing that papers served on a member organization by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134.

Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Further, the proposed amendment would specify that papers served on counsel for a member organization or covered person, or other person authorized to represent others under Rule 9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with Rule 9134(a)(1) and (3).

Finally, the last sentence of subsection (b) would be amended to reflect that service is complete "sending" rather than "mailing", which word would be deleted; adding the phrase "email or" to the list of service methods; and adding an exception clause providing that "except that, where duplicate service is required, service is complete upon sending the duplicate service."

- With the exception of conforming changes to reflect the Exchange's membership, omission of service by facsimile,[31] and omission of a reference to "the email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws," [32] the text of the proposed amendments to NYSE Rules 9551, 9552, 9554, 9555, 9556, 9557, and 9558 is substantially similar to that of FINRA Rules 9551, 9552, 9554, 9555, 9556, 9557, and 9558.

- The Exchange proposes amending Rule 9556(g) to add the phrase, "imposed after the process described in paragraphs (a) through (f) of" (and delete the word "under") before the phrase, "this Rule," to conform to the recent changes to FINRA Rule 9556(g). The Exchange believes that the proposed change adds greater specificity to the Rule.
- The Exchange also proposes adding a new subsection (h) to Rule 9556 titled "Subsequent Proceedings" permitting Regulatory Staff (with prior written authorization from the CRO) to file a petition seeking a hearing if the subject of a temporary or permanent cease and desist order fails to comply with that order and has previously been served with a notice under Rule 9556(a) for a failure to comply with any provision of the same temporary or permanent cease and desist order.
  - Under the proposed Rule, the petition shall be served in accordance with Rule 9556(b) and filed with the Office of Hearing Officers.[33] The proposed Rule would also require the petition to explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Regulatory Staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. Regulatory Staff may seek the imposition of any fitting sanction.[34]
  - Proposed Rule 9556(h)(3) provides that, in contrast to other Rule 9556 proceedings, a Respondent's compliance with the temporary or permanent cease and desist order is not a ground for dismissing the Rule 9556(h) proceeding. Thus, a Respondent's compliance with a temporary or permanent cease and desist order after a Rule 9556(h) proceeding has been initiated would not prevent an adjudicator from reviewing the matter and imposing a fitting sanction for the Respondent's violation.
  - Finally, Proposed Rule 9556(h)(4) provides that Regulatory Staff can withdraw the petition without prejudice and can refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition. As with the FINRA rule on which it is based, the proposed provision provides the Exchange with the flexibility to withdraw the petition where, for instance, the Respondent evidences a good faith intent to comply with the temporary or permanent cease and desist order without the need to adjudicate the petition, while preserving the Exchange's right to refile the petition if the Respondent fails to do so.[35] Proposed Rule 9556(h) is substantially similar to FINRA Rule 9556(h).
- Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) sets forth uniform hearing procedures for all expedited proceedings under the Rule 9550 Series. The Exchange proposes to amend Rule 9559 to reflect the new expedited proceedings set forth in proposed Rule 9556(h). The proposed changes are substantially similar to those recently adopted by FINRA for its Rule 9559. Specifically:
  - Rule 9559(a) would be amended to add the phrase "or who is served with a petition instituting an expedited proceeding under Rule 9556(h)."
  - Rule 9559(c), which governs stays, would be amended to add a new subparagraph (1)(B) specifying that stays under subsection (c) would not apply to a petition instituting an expedited proceeding under Rule 9556(h).
  - Rule 9559(d), governing the appointment and authority of hearing officers and hearing panels, would similarly be amended to add references to proceedings under Rule 9556(h).
  - Rule 9559(f), governing time of hearing, would be amended to add a new subsection (2) providing that a hearing shall be held within ten days after a Respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h), adding a reference to Rule 9556(h) to current subsection (2), and renumbering the remaining subsections.
  - Rule 9559(g), governing notice of hearing, would be amended to add a new subsection (2) providing that a Hearing Officer shall issue a notice stating the date, time, and place of the hearing at least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h), adding a reference to Rule 9556(h) to current subsection (2), and renumbering the remaining subsections.
  - Rule 9559(h) governing transmission of documents would be amended as follows to reflect the new expedited proceeding the Exchange proposes under Rule 9556(h) for enforcing violations of a temporary or permanent cease and desist orders [sic]. The changes closely parallel FINRA's amendments to its version of Rule 9559(h) to bring Rule 9556(h) proceedings within the scope of the rule and distinguish them from actions brought under Rule 9556 and already reflected in the rule.

The first sentence of subsection (h)(1) would be amended to add the clause "not less than six days before the hearing in an action brought under Rule 9556(h)" after "Not less than two business days before the hearing in an action brought under Rule 9557," to specifically bring proposed proceedings under Rule 9556(h) within the scope of the Rule. The clause "not less than seven days before the hearing in an action brought under Rules 9556 and 9558" that would follow the proposed addition would be amended to carve out Rule 9556(h) proceedings by adding the words "except Rule 9556(h)" after "Rules 9556" and before "and 9558." Subsection (h)(1) would be further amended to reflect that "the respondent who has received a petition pursuant to Rule 9556(h)" would also be provided with all documents that were considered in issuing the notice, and that these documents could be provided by email or personal delivery in addition to overnight courier.

The Exchange also proposes to add the sentence "Documents served by email shall also be served by either overnight courier or personal delivery" before the last sentence in Rule 9559(h)(1).

The last sentence of subsection (h)(1) would be amended to delete the word "such" and add the word "the" before "criteria," and to add the clause "in this paragraph" after the word "criteria."

Rule 9559(h)(2) would be amended to provide that exhibit and witness lists shall be served by email or personal delivery in addition to overnight courier. Finally, the Exchange proposes to add a sentence to the end of subsection (h)(2) providing that "Documents served by email shall also be served by either overnight courier or personal delivery."

---

[31] *See* 2015 FINRA Filing, 80 FR at 48380 ("FINRA proposed to explicitly allow service by facsimile and on counsel, as well as by email, across all temporary cease and desist and expedited proceedings").

[32] *See id.* The proposed rule change permitting email service in Rules 9551, 9552, 9554, 9555, 9556, 9557, and 9558 is the same as that contained in the corresponding FINRA rules, except the proposed rules provide that papers served on a member organization by email shall be sent to "the email address on file with the Exchange" instead of "the email address listed in the FINRA Contact System submitted to FINRA pursuant to Article 4, Section III of the FINRA By-Laws." The Exchange's membership department collects and maintains email contact information for member organizations.

[33] Proposed Rule 9556(h)(1).

[34] *Id.* at (2).

[35] *See* 2015 FINRA Notice, 80 FR at 38785.

○ Rule 9559(m), governing failure to appear at a pre-hearing conference or hearing or to comply with a Hearing Officer order requiring production of information, would be amended to add a new subsection (2) providing that a Hearing Officer may issue a default decision against a Respondent who is the subject of a petition[36] filed pursuant to Rule 9556(h), and may deem the allegations against that Respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A Respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final Exchange action.

○ Finally, Rule 9559(n) governing sanctions, costs and remands would be amended to add references to Rule 9556(h) proceedings. Rule 9559(n) would also be amended to add a new subsection (2) providing that, in an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction. The remaining subsections of the Rule would be renumbered. These proposed changes are identical to those recently adopted in FINRA Rule 9559.

- Rule 9810 (Initiation of Proceeding) sets forth procedures for initiating temporary cease and desist proceedings. The Exchange proposes various amendments to the Rule to harmonize it with FINRA Rule 9810, as follows:

○ Rule 9810(a) governing service and filing of a notice would be amended to add text providing that a proceeding can alternatively be initiated by service upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent. Rule 9810(a) would also be amended to specifically provide for service by email, and text would be added to the Rule providing that if service is made by email, Enforcement shall send an additional copy of the notice by personal service or overnight commercial courier and that service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. Finally, the Rule would be amended to provide that the notice shall be effective when service is complete.

○ Rule 9810(b) sets forth the requirements for the content of the notice, and would be amended to add a new subsection (2) providing that the notice also be accompanied by a memorandum of points and authorities setting forth the legal theories upon which Enforcement relies. Current subsection (2) would be renumbered. The Exchange also proposes to clarify the required contents of the notice by specifying that the notice shall state whether Enforcement is requesting the Respondent to be required to take action, refrain from taking action "or both."

○ The Exchange proposes to add a new subsection (c) to Rule 9810 entitled "Authority to Approve Settlements," providing that if the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

○ Current subsection (c) of Rule 9810 governing filing of the underlying complaint would become subsection (d). The Exchange also proposes to add a sentence providing that service of the complaint can be made in accordance with the service provisions in paragraph (a).

- Rule 9830 (Hearing) sets forth hearing procedures for temporary cease and desist proceedings. The Exchange proposes the following changes to harmonize the Rule with FINRA's recent amendments:

○ Rule 9830(a) would be amended to specify that either the Chief Hearing Officer or Deputy Chief Hearing Officer can extend the date of hearing for good cause shown and eliminate the need for consent of the parties.

○ Rule 9830(b) would be amended to add text specifying that the Office of Hearing Officers can also serve notice of a hearing upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent, and to specify that service can be by email.

The Rule would also be amended to add text specifying that if service is made by email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

○ Rule 9830(e) would be amended to add text specifying that, prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The Rule would also provide that documentary evidence submitted by the Parties would not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of the evidence included pursuant to Rule 9830(g). The Exchange would also change the phrase, "its consideration" to "the Hearing Panel's consideration," to add greater specificity.

- Rule 9840 (Issuance of Temporary Cease and Desist Order by Hearing Panel) sets forth the basis, including the evidentiary standard, for issuance of a temporary cease and desist order. The Exchange proposes the following changes to harmonize the Rule with FINRA's recent amendments:

○ Rule 9840(a) would be amended to specify that either the Chief Hearing Officer or Deputy Chief Hearing Officer can extend the ten day period for issuance of a decision stating whether a cease and desist order shall be imposed for good cause shown and eliminate the need for consent of the parties. Rule 9840(a)(1) would be amended to revise the evidentiary standard in temporary cease and desist proceedings to "a showing of likelihood of success on the merits." This was one of the main changes recently effectuated by FINRA.[37] Rule 9840(a)(2) would be amended to add "alleged" before the term "violative conduct" in keeping with the recent FINRA amendment.

---

[36] The first paragraph of Rule 9559(m) would also be amended to add "or petition" after the word "notice" to reflect proposed expedited proceedings under Rule 9556(h). In the penultimate sentence of the first paragraph, the comma after "In such cases" would be deleted, and a colon would be added in its place. The remainder of the sentence, together with the last sentence of the current rule, would be renumbered as new subsection (1).

[37] *See* 2015 FINRA Notice, 80 FR at 38784. The current evidentiary standard for imposing a temporary cease and desist order, set forth in Rule 9840(a)(1), is "a preponderance of the evidence that the alleged violation specified in the notice has occurred." As explained in the 2015 FINRA Notice, the "preponderance of the evidence" standard sets too high an evidentiary threshold for this critical investor-protection tool. Indeed, it is the identical standard for proving a violation in the concurrent underlying disciplinary proceeding. This poses administrative challenges that create a strong disincentive to seek a temporary cease and desist order. *See id.*

○ Rule 9840(b)(1) and (3) would be amended to apply to any successor of a Respondent, where the Respondent is a member organization. This proposed change is similar to the proposed change with respect to Rule 9291, discussed above [sic]. Subsection (3) would also be amended to remove the words "is to" and "or" and add the words "or both" to the end of the clause.

○ Rule 9840(c) would be amended to provide that, alternatively, a temporary cease and desist order would remain effective and enforceable until a settlement offer is accepted pursuant to Rule 9270.

○ Rule 9840(d) would be amended to specify that the Hearing Panel's decision and any temporary cease and desist order should be served by the Office of Hearing Officers on Enforcement and the Respondent or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent. The Rule would also be amended to specify that service can be by email and that if service is made by email, the Office of Hearing Officers shall send an additional copy of the decision and any temporary cease and desist order by personal service or overnight commercial courier. Under the proposed Rule, service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when duplicate service is complete. The Office of Hearing Officers provides a copy of the temporary cease and desist order to each member organization with which a Respondent is associated.

○ Finally, the Exchange proposes to add a new subsection (e) headed "Delivery Requirement" that provides that where a Respondent is a member organization, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its covered persons.

- Rule 9850 (Review by Hearing Panel) sets forth the process for a Party to petition the Hearing Panel to modify, set aside, limit or suspend a temporary cease and desist order. The Exchange proposes the following changes to harmonize the Rule with FINRA's recent amendments:

○ The first sentence of Rule 9850 would be amended to add a clause specifying that the Office of Hearing Officers can also serve a temporary cease and desist order upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent.

○ Rule 9850 would be amended to add a sentence providing that the Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction.

○ Rule 9850 would also be amended to specify that either the Chief Hearing Officer or Deputy Chief Hearing Officer can extend the time for the Hearing Panel to respond to a request under the Rule for good cause shown and eliminate the need for consent of the parties.

○ Rule 9850 would be amended to add text specifying that the Hearing Panel's response can also be served upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent, and that email is a permitted method of service. A sentence would also be added before the last sentence in the Rule providing that if service is made by email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier.

- Rule 9860 (Violation of Temporary Cease and Desist Orders) provides that a Respondent who violates a temporary cease and desist order may have its association or membership suspended or canceled under Rule 9556. The Exchange proposes to amend the Rule to add that a Respondent may also be subject to any fitting sanction under Rule 9556.
- Finally, the Exchange proposes to adopt the text of FINRA Rule 9291 governing the content, scope, and form of a permanent cease and desist order. Under proposed Rule 9291(a), when a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, the decision shall: order a Respondent (and any successor of a Respondent, where the Respondent is a member organization) to cease and desist permanently from violating a specific rule or statutory provision; set forth the violation; and describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member organization) shall take or refrain from taking.

The proposed Rule would also require Respondents that are member organizations to deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons.[38] With the exception of conforming changes to reflect the Exchange's membership, the text of the proposed Rule is the same as FINRA Rule 9291. The Exchange currently does not have a similar rule.

Technical and Conforming Changes

The Exchange proposes technical and conforming changes to Rule 9310. Rule 9310(b), which governs reviews by the Exchange Board of Directors, would be amended to specify that the determinations or penalties imposed subject to Board review would include the terms of any permanent cease and desist order.

2. Statutory Basis

Amendments to Rule 8313

The Exchange believes that the proposed changes to Rule 8313 are consistent with Section 6(b) of the Act,[39] in general, and Section 6(b)(1)[40] in particular, in that they enable the NYSE to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE. In particular, the Exchange believes that the proposed changes to Rule 8313 regarding release of disciplinary complaints, decisions and other information are consistent with Section 6(b) of the Act because they would establish general standards for the release of disciplinary information to the public to provide greater access to information regarding the Exchange's disciplinary actions.

For the same reasons, the Exchange believes that the proposed changes to Rule 8313 further the objectives of Section 6(b)(5) of the Act[41] because the changes are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the proposed amendments to Rule 8313 further the objectives of Section 6(b)(5) of the Act by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. By adopting the proposed amendments to Rule 8313 modeled on FINRA's rule, the Exchange would establish standards for the release of disciplinary information to the public in line with those in effect at FINRA that provide greater access to information regarding the Exchange's disciplinary actions and describe the scope of information subject to proposed Rule 8313. The Exchange believes that this proposed rule change promotes greater transparency to the Exchange's disciplinary process, and that the proposed rule change provides greater access to information regarding its disciplinary actions, and also provides valuable guidance and information to member organizations, associated persons, other regulators, and the investing public.[42]

---

[38] *See* proposed Rule 9291(b).

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(1).

[41] 15 U.S.C. 78f(b)(5).

Harmonization With FINRA Rules

The Exchange believes that the proposed changes to Rules 9120, 9268, 9269, 9270, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, 9830, 9840, 9850, and 9860 and adopting a new Rule 9291 regarding the imposition of temporary or permanent cease and desist orders are consistent with Section 6(b) of the Act,[43] in general, and Section 6(b)(1)[44] in particular, in that they enable the NYSE to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of NYSE. In particular, the Exchange believes that the proposed changes are consistent with Section 6(b) of the Act because the changes would enhance the Exchange's ability to utilize its temporary cease and desist authority, thereby making it a more viable investor-protection tool and allowing the Exchange to take appropriate action against member organizations and their associated persons engaged in serious misconduct.

For the same reasons, the Exchange believes that the proposed changes to the Exchange's rules further the objectives of Section 6(b)(5) of the Act[45] because the changes are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, revising the evidentiary standard for obtaining temporary cease and desist orders by harmonizing the Exchange's rules with those of FINRA would better serve the investor protection purposes of the Exchange's temporary cease and desist authority and allow the Exchange to initiate and resolve temporary cease and desist proceedings more expeditiously. Further, these proposed changes, including the revised evidentiary standard, would also improve the Exchange's ability to enforce compliance with applicable laws and rules by its member organizations and persons associated with member organizations, and the Exchange's ability to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed rule change supports the objectives of Section 6(b)(5) of the Act by providing greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members. As previously noted, the text of Rules 9120, 9268, 9269, 9270, 9291, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, 9830, 9840, 9850, and 9860 relating to the imposition of temporary or permanent cease and desist orders is substantially the same as FINRA's rule text. To the extent the Exchange has proposed changes that differ from the FINRA version of the Exchange rules, such changes are generally technical in nature and do not change the substance of the rules.

In addition, the Exchange believes that the proposed changes to Rules 9120, 9268, 9269, 9270, 9551, 9552, 9554, 9555, 9556, 9557, 9558, 9559, 9810, 9830, 9840, 9850, and 9860 and adopting a new Rule 9291 further the objectives of Section 6(b)(7) of the Act[46] in that they provide fair procedures for, among other things, the disciplining of members and persons associated with members[47] because the rules governing temporary cease and desist orders and expedited proceedings require notice and an opportunity to be heard before a neutral tribunal, in addition to the numerous other procedural safeguards described above and included in the rules. At the same time, the proposed rule change maintains all of the existing restraints on the Exchange's temporary cease and desist authority, including rule provisions that restrict who may authorize the initiation of a temporary cease and desist proceeding; narrowly define the violations that a temporary cease and desist order can address; and limit the issuance of temporary cease and desist orders to situations where the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors.[48]

Finally, making conforming amendments to Rule 9310 in connection with the proposed harmonization of the Exchange's rules governing temporary cease and desist orders and expedited proceedings supports the objectives of Section 6(b)(5) of the Act. The conforming amendments will update and add specificity to the Exchange's rules, which will promote just and equitable principles of trade and help to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but rather it is designed to (1) enhance the Exchange's rules governing the release of disciplinary complaints, decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions, and (2) provide greater harmonization among Exchange and FINRA rules of similar purpose regarding the imposition of temporary cease and desist orders and expedited proceedings, thereby enhancing the quality of the Exchange's regulatory program, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

---

[42] *See* Release No. 69178, 78 FR at 38775.

[43] 15 U.S.C. 78f(b).

[44] 15 U.S.C. 78f(b)(1).

[45] 15 U.S.C. 78f(b)(5).

[46] 15 U.S.C. 78f(b)(7).

[47] Under the Exchange's equities rules, the equivalent to the term "member" in this context is "member organization." *See* note 23, *supra.*

[48] *See* Rule 9840(a)(2). Under NYSE Rule 9810(a), with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act, SEC Rules 10b–5 and 15g–1 through 15g–9, NYSE Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or is based on violations of Section 17(a) of the Securities Act of 1933) or NYSE Rule 2020. *See also* 2015 FINRA Notice, 80 FR at 38784.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[49] and Rule 19b–4(f)(6) thereunder.[50] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[51] and Rule 19b–4(f)(6) thereunder.[52]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–40, and should be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20733 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[49] 15 U.S.C. 78s(b)(3)(A).

[50] 17 CFR 240.19b–4(f)(6).

[51] 15 U.S.C. 78s(b)(3)(A).

[52] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[53] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32234; File No. 812–14529]

Calvert Social Investment Fund, et al.; Notice of Application

August 24, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order pursuant to (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Summary of the Application: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

Applicants: Calvert Social Investment Fund, Calvert Sage Fund, Calvert World Values Fund, Inc., Calvert Responsible Index Series, Inc., Calvert Impact Fund, Inc., The Calvert Fund, Calvert Management Series, Calvert Variable Series, Inc., and Calvert Variable Products, Inc. (collectively, the "Companies"), and Calvert Investment Management, Inc. ("CIM").

Filing Dates: The application was filed on August 5, 2015, and amended on January 19, 2016, and April 28, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street

NE., Washington, DC, 20549–1090; Applicants, c/o Andrew K. Niebler, Esq., Calvert Investment Management, Inc., 4550 Montgomery Avenue Suite 1000N, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Erin C. Loomis, Senior Counsel, at (202) 551–6721 or Sara Crovitz, Assistant Chief Counsel, at (202) 551–6862 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Company is organized as a Massachusetts business trust, Maryland corporation or Maryland business trust. Each Company is registered under the Act as an open-end management investment company. Each Company consists of one or more series, none of which hold themselves out as money market funds in reliance on rule 2a–7 under the Act, and each Company may offer additional series in the future. CIM serves as the investment adviser to the Funds and is a wholly-owned subsidiary of Calvert Investments, Inc., which is an indirect wholly-owned subsidiary of Ameritas Mutual Holding Company.[1] CIM and every investment adviser to the Funds will be registered as an investment adviser under the Investment Advisers Act of 1940.

2. At any particular time, while Funds with uninvested cash may enter into repurchase agreements or purchase other short-term instruments issued by banks or other entities, other Funds may need to borrow money from the same or similar banks for temporary purposes to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Certain Funds may borrow for investment purposes; however, such Funds will not borrow from the Facility (as defined below) for the purposes of leverage. Presently, the Funds have committed and uncommitted lines of credit with their custodian bank, which is unaffiliated with the Funds. If a Fund had a temporary cash need, it could borrow money through the line of credit.

3. If the Funds borrowed under a line of credit from their custodian bank, the Funds would pay interest on the borrowed cash at a rate that would be higher than the rate that would be earned by other (non-borrowing) Funds on the investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants assert that this differential represents the profit the banks would earn for serving as a middleman between a borrower and lender and is not attributable to any material difference in the credit quality or risk in such transactions. The banks, in effect, would borrow uninvested cash from some Funds in the form of repurchase agreements or other short-term obligations and lend cash to other Funds at a rate higher than the bank's cost of borrowing the cash.

4. The Funds seek to enter into master interfund lending agreements ("Interfund Lending Agreements") with each other that would permit each Fund to lend money directly to and borrow money directly from other Funds through a credit facility ("Facility") for temporary purposes (an "Interfund Loan"). Applicants assert that the Facility would both reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the Facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and maintain committed lines of credit or other borrowing arrangements with unaffiliated banks. The Funds are charged a commitment fee up-front to obtain the bank's commitment to lend money. These fees must be paid regardless of whether a Fund borrows any money from the bank. Due to the up-front costs of these arrangements, the Funds prefer to have available additional credit arrangements.

5. Applicants anticipate that the Facility will provide a borrowing Fund with significant savings at times when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes, and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The redemption requests, however, normally are satisfied promptly upon receipt. The Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants anticipate that a Fund could use the Facility when a sale of securities "fails" due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. "Sales fails" may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Under such circumstances, the Fund could: (1) "fail" on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or (2) sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the Facility under these circumstances would give the Fund access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan. Under the Facility, a borrowing Fund would pay lower interest rates than those that would be payable under short-term loans offered by banks. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or other substantially equivalent short-term investments. Thus, applicants assert that the Facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan ("Interfund Loan Rate") would be determined daily and would be the average of: (1) The "Repo Rate," as defined below, and (2) the "Bank Loan Rate," as defined below. The "Repo Rate" on any day would be the highest current overnight repurchase agreement rate available to a lending Fund. The Bank Loan Rate for any day would be calculated by the Fund Administration Department (as defined below) on each day an Interfund Loan is made according to a formula established by each Fund's board of directors/trustees ("Board") intended to approximate the

---

[1] Applicants request that the order apply to any registered open-end management investment company or series thereof (except with respect to a money market fund) for which CIM or any successor thereto or an investment adviser controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with CIM or any successor thereto serves as investment adviser (each a "Fund," and collectively the "Funds"). All Funds that currently intend to rely on the requested order have been named as applicants, and any other Fund that relies on the requested order in the future will comply with the terms and conditions of the application. The term "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

lowest interest rate at which bank short-term loans would be available to the Funds.

The formula would be based upon a publicly available rate (*e.g.*, federal funds plus 125 basis points), which rate would vary so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board of each Fund. In addition, the Board of each Fund periodically would review the continuing appropriateness of reliance on the publicly available rate used to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. Applicants assert that the continual adjustment of the Bank Loan Rate to reflect changes to prevailing bank loan rates and the periodic review by the Board of each Fund of the relationship between current bank rates and the Bank Loan Rate, as well as the method of determining the Bank Loan Rate, should ensure that the Bank Loan Rate reflects current market rates.

9. The Facility would be administered by officers and employees of the Calvert Fund Administration Department (the "Fund Administration Department"), which is a part of Calvert Investment Administrative Services, Inc., an affiliate of CIM. The Fund Administration Department is responsible for, among other things, ensuring accurate calculation of Fund net asset values, and preparing Fund financial statements and other reports. No portfolio manager of any Fund will serve in the Fund Administration Department. The Facility would be available to any Fund. On any day on which a Fund intends to borrow money, the Fund Administration Department would make an Interfund Loan from a lending Fund to a borrowing Fund only if the Interfund Loan Rate is: (1) More favorable to the lending Fund than the Repo Rate and (2) more favorable to the borrowing Fund than the Bank Loan Rate. Under the Facility, the portfolio managers for each participating Fund could provide standing instructions to participate in the Facility daily as a borrower or lender. The Fund Administration Department on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. The Fund Administration Department would not solicit cash for loans from any Fund or prospectively publish or disseminate the amount of current borrowing demand to portfolio managers. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Fund Administration Department would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds. Applicants anticipate that there typically will be far more available uninvested cash each day than borrowing demand. Therefore, after the Fund Administration Department has allocated cash for Interfund Loans, any remaining cash will be invested in accordance with the instructions of each relevant portfolio manager or such remaining amounts will be invested directly by the portfolio managers of the Funds.

10. The Fund Administration Department would allocate borrowing demand and cash available for lending among the Funds on what the Fund Administration Department believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as: (1) The time of filing requests to participate, (2) minimum loan lot sizes, and (3) the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by the Board of each Fund, including a majority of the members of the Board who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Board Members"), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Fund Administration Department would: (1) Monitor the interest rates charged and the other terms and conditions of the loans; (2) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (3) ensure equitable treatment of each Fund; and (4) make quarterly reports to each Fund's Board concerning any transactions by the Fund under the Facility and the Interfund Loan Rate charged.

12. CIM, through the Fund Administration Department, would administer the Facility as a disinterested fiduciary as part of its duties under the investment management and administrative agreements with each Fund and would receive no additional fee as compensation in connection with the administration of the Facility.

13. No Fund may participate in the Facility unless: (1) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (2) the Fund has fully disclosed all material information concerning the Facility in its prospectus and/or statement of additional information; and (3) the Fund's participation in the credit facility is consistent with its investment objective, limitations, and organizational documents.

14. As part of the Board's review of the continuing appropriateness of a Fund's participation in the Facility as required by condition 14, the Board of each Fund, including a majority of Independent Board Members, also will review the process in place to appropriately assess: (i) If the Fund participates as a lender, any effect its participation may have on the Fund's liquidity risk; and (ii) if the Fund participates as a borrower, whether the Fund's portfolio liquidity is sufficient to satisfy its obligations under the Facility along with its other liquidity needs.

15. In connection with the Facility, applicants seek an order pursuant to section 6(c) of the Act exempting them from the provisions of section 18(f) and 21(b) of the Act; pursuant to section 12(d)(1)(J) of the Act exempting them from the provisions of section 12(d)(1) of the Act; pursuant to sections 6(c) and 17(b) of the Act exempting them from the provisions of sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Act; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder, to permit certain joint arrangements and to allow them to participate in the Facility.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines "control" as the "power to exercise a controlling influence over the management or policies of a company," but excludes situations in which "such power is solely the result of an official position with such company." Applicants state that the Funds may be under common control and thus "affiliated persons" of

each other within the meaning of that term under section 2(a)(3) of the Act by virtue of having CIM as their common investment adviser and/or by reason of having common officers, directors and/or trustees.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act generally provides that the Commission may exempt a proposed transaction from the provisions of section 17(a) provided that: (i) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the transaction is consistent with the policy of the investment company as recited in its registration statement and reports filed under the Act; and (iii) the transaction is consistent with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Facility transactions do not raise these concerns because: (i) CIM, through the Fund Administration Department, would administer the program as a disinterested fiduciary as part of its duties under the investment management and administrative service agreements with each Fund; (ii) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (iii) the Interfund Loans would not involve a significantly greater risk than other such investments; (iv) the lending Fund would earn interest at a rate higher than it could otherwise obtain through such other investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants assert that the other terms and conditions that applicants propose also would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act generally prohibits any registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act. Applicants also state that a pledge of assets in connection with an Interfund Loan could be construed as a purchase of the borrowing Fund's securities or other property for purposes of section 17(a)(2) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).

6. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investments. Applicants submit that the Facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or their shareholders, and that CIM, through the Fund Administration Department, will receive no additional compensation for their services in connection with the administration of the Facility. Applicants also note that the purpose of the Facility is to provide economic benefits for all the participating Funds and their shareholders.

7. Section 18(f)(1) of the Act prohibits any open-end investment company from issuing any senior security except that any such company is permitted to borrow from any bank, provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief under section 6(c) from section 18(f)(1) to the limited extent necessary to permit a Fund to borrow directly from other Funds.

8. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the Facility is consistent with the purposes and policies of section 18(f)(1).

9. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of such a person, when acting as principal, from effecting any transaction in which the investment company is a joint, or joint and several participant, unless, upon application, the transaction has been approved by an order of the Commission. Rule 17d–1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement, or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

10. Applicants assert that the purpose of section 17(d) is to avoid overreaching

and unfair advantage to insiders. Applicants assert that the Facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and limitations. Applicants assert that each Fund's participation in the Facility would be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and Bank Loan Rate.

2. On each business day, the Fund Administration Department will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (i) More favorable to the lending Fund than the Repo Rate; and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding bank borrowings, any Interfund Loans to the Fund: (i) Will be at an interest rate equal to or lower than the interest rate of any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (iv) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Facility on a secured basis only. A Fund may not borrow through the Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (i) Repay all its outstanding Interfund Loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the Facility if the loan would cause its aggregate outstanding loans through the Facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of the Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition 8.

9. A Fund's borrowings through the Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions for the preceding seven calendar days or 102% of the Fund's sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the Facility must be consistent with its investment objectives and limitations and organizational documents.

12. The Fund Administration Department will calculate total Fund borrowing and lending demand through the Facility and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Fund Administration Department will not solicit cash for the Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Fund Administration Department will invest any amounts remaining after satisfaction of borrowing demand in accordance with the instructions of each relevant portfolio manager or such remaining amounts will be invested directly by the portfolio managers of the Funds.

13. The Fund Administration Department will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and, CIM, through the Fund Administration Department, will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the Facility and the terms and other conditions of any extension of credit under the Facility.

14. The Board of each Fund, including a majority of Independent Board Members, will:

(a) Review, no less frequently than quarterly, the relevant Fund's participation in the Facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the relevant Fund's participation in the Facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, CIM will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds involved to resolve the dispute.

16. Each Fund will maintain, and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. The Fund Administration Department will prepare and submit (through CIM) to the Board of each Fund for review an initial report describing the operations of the Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of the Facility, the Fund Administration Department will report on the operations of the credit facility at each Board's quarterly meetings. In addition, each Fund's chief compliance officer, as defined in rule 38a–1(a)(4) under the Act, shall prepare an annual report for its Board each year that the Fund participates in the Facility, which report evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N–SAR, as such Form may be revised, amended, or superseded from time to time, for each year that the Fund participates in the Facility, that certifies that the Fund and CIM have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board of each Fund; and (e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examinations of the Fund, will review the operation of the Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20738 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78665; File No. SR–Phlx–2016–85)

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Connectivity Fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule

August 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's connectivity fees at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to: (i) limit the total monthly fee a PSX Participant may be assessed for connectivity under the rule; and (ii) provide a waiver of all connectivity fees to new PSX Participants for a limited time; (iii) eliminate prorated billing; and (iv) change the name of the fees assessed under the rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's connectivity fees under "Access Services Fees" at Chapter VIII of the NASDAQ PHLX LLC Pricing Schedule to: (i) limit the total monthly fee a PSX Participant may be assessed for connectivity under the rule; (ii) provide a waiver of all connectivity fees to new PSX Participants for a limited time; (iii) eliminate prorated billing; and (iv) change the name of the fees assessed under the rule from "Access Services Fees" to "Port Fees," as described further below. Access Services Fees include the choices for connecting to PSX and receipt of data therefrom, together with the fees assessed for that connectivity.

---

[2] If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

First Change

The purpose of the first change is to limit the overall costs to Participants for connecting to the Exchange by capping the total monthly fee a Participant may be assessed at $30,000. The Exchange believes that the proposed fee cap will make PSX a more attractive venue for Participants, and help PSX both retain and attract new Participants. The proposed fee cap will apply to all Access Services[3] fees assessed under the rule, in aggregate and per Participant. Thus, a Participant may meet the $30,000 per month fee cap with any combination of subscriptions provided under the rule.

Second Change

Similar to the first change, the purpose of the second change is to reduce the costs of connecting to the Exchange for market participants that are not currently Participants on PSX by providing a waiver of all connectivity fees under the rule to new PSX Participants for a limited time. Specifically, the Exchange is proposing to waive all Access Services Fees for every Participant that is a "new PSX Participant" through August 1, 2017. The Exchange is defining a "new PSX Participant" as a Participant that was not a Participant after July 1, 2016. The Exchange believes that the proposed fee waiver will make PSX a more attractive venue for prospective Participants.

Third Change

The purpose of the third change is to harmonize the billing practices for subscription to PSX ports under Access Services Fees with those of the Exchange's Options Market by no longer applying a prorated fee for subscriptions that are effective other than the first of any given month.[4] The Exchange does not prorate options market connectivity subscriptions; thus, options participants would be assessed a full month's fee for a connectivity subscription if they direct the Exchange to make the subscribed connectivity live on any day of the month, including the last day thereof.[5]

Currently, connectivity on PSX under the rule is prorated based on the day that it is activated, with the PSX Participant only fee liable for the remaining days of the partial month. The Exchange has found that prorating billing has inserted complexity into the billing process. As a consequence, the Exchange is harmonizing the billing process with that of the Exchange's Options market and not permitting prorated billing.

Fourth Change

The purpose of the fourth change is to rename the title of the section from "Access Services Fees" to "Port Fees," which the Exchange believes is a more accurate description of the connectivity provided by the rule. In this regard, the Exchange notes that each connectivity option under the rule provides the Participant with a specific port, which is noted in the rule. The proposed name change in no way alters what is offered under the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First Change

The Exchange believes that the first change is reasonable because it will limit the overall costs to Participants for connecting to the Exchange and may, in turn, attract new Participants and retain existing Participants. Attracting and retaining Participants will benefit all market participants on PSX by ensuring that the market remains deep and liquid. The fee cap may also provide incentive to Participants to subscribe to additional ports, potentially for the purpose of increasing their activity on PSX. Moreover, the proposed fee cap is set a level that will allow the Exchange to continue to cover costs associated with providing connectivity to PSX. For these reasons, the Exchange believes that the proposed fee cap is reasonable.

The Exchange believes that the first change is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the same fee to all similarly situated members. In this regard, all Participants have the opportunity to take advantage of the fee cap to the extent their subscriptions exceed the $30,000 per month level. Participants that are unwilling to subscribe to connectivity at a level that exceeds the fee cap will still benefit from the liquidity provided by Participants that have increased their connectivity and participation in the PSX market.

Second Change

The Exchange believes that the second change is reasonable because it will limit the overall costs incurred by new Participants in connecting to the Exchange, which may as a consequence attract new Participants. Attracting new Participants will benefit all market participants on PSX by ensuring that PSX remains deep and liquid. The Exchange believes that the second change is an equitable allocation and is not unfairly discriminatory because the Exchange will uniformly apply the same fee to all similarly situated Participants. In this regard, the Exchange is proposing to apply the fee waiver to new PSX Participants, which the Exchange proposes to define as a Participant that was not a Participant prior to July 1, 2016.

Limiting eligibility for the fee waiver, as described, will ensure that the waiver is only available to market participants that were not already considering becoming a Participant imminently, thus limiting the incentive to attracting truly new Participants. Waiving the fees for new Participants will ease the burden of participating on PSX, which may be a significant reason that such market participants have historically declined to become Participants. Thus, to the extent this waiver is successful, the proposed change will broaden participation on PSX, which will benefit all Participants by providing more liquidity.

---

[3] As discussed below, the Exchange is proposing to rename "Access Services Fees" under the rule as "Port Fees."

[4] *See* NASDAQ PHLX LLC Pricing Schedule, Chapters VI.A, VI.B, VI.C, VII.A and VII.B. Chapter VII.B. is titled "Port Fees" and sets forth the connectivity choices for the Phlx Options market.

[5] For example, in a filing increasing an Order Entry Port Fee the Exchange noted:

> The Exchange currently assesses an Order Entry Port Fee per month, per mnemonic of $500. This fee is assessed on members regardless of whether the order entry mnemonic is active during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.

See Securities Exchange Act Release No. 68473 (December 19, 2012), 77 FR 76128 (December 26, 2012) (SR–Phlx–2012–140).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

Third Change

The Exchange believes that the third change is reasonable because it will reduce a complexity in the billing process and will harmonize it with the process applied to Exchange Options market participants. As noted above, Participants choose when they want a new connectivity subscription to begin and thus may make the determination of when they wish to be fee liable. Participants will continue to choose when they become fee liable under the proposed change, but now the Exchange will assess the full month's fee regardless of when the port is subscribed.

The Exchange believes that the third change is an equitable allocation and is not unfairly discriminatory because it will apply the same fee to all similarly situated Participants. Moreover, the Exchange believes the proposed change is an equitable allocation and is not unfairly discriminatory because it will harmonize the billing process with that of the Exchange's Options market. Thus, the Exchange will apply the same process to both its Options and Equities market Participants.

Fourth Change

The Exchange believes that the proposed renaming of the fee section under the rule further perfects the mechanism of a free and open market and a national market system, and, in general, promotes the public interest because the proposed new name is more reflective of the type of connectivity provided under the rule. Therefore, the Exchange believes that the proposed change will promote better market participant understanding over the scope and nature of the fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed changes generally reduce the fee burdens on Participants in an effort to attract and retain Participants, which benefits all market participants on PSX to the extent the incentives are effective. Although eliminating prorated fees for subscriptions under the rule will result in an increase in fees for new subscriptions, the Exchange notes that it is doing so to both simplify the process and harmonize it with the process applied to the Exchange's Options Participants.

The Exchange notes that participation on PSX is completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. Thus, to the extent that the proposed changes to the connectivity fees proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and Participants as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2016–85 and should be submitted on or before September 20, 2016.

---

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20734 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78668; File No. SR–BOX–2016–28]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving a Proposed Rule Change To Expand the Short Term Option Series Program To Allow Wednesday Expirations for SPY Options

August 24, 2016.

I. Introduction

On June 30, 2016, BOX Options Exchange LLC (“BOX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules governing the Short Term Option Series Program [3] to allow the listing and trading of options on the SPDR S&P 500 ETF Trust (“SPY”) with Wednesday expirations. The proposed rule change was published for comment in the **Federal Register** on July 13, 2016.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Under the terms of the current Short Term Option Series Program, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire on each of the next five Fridays, provided that such Friday is not a Friday in which monthly options series or Quarterly Options Series expire.[5]

The Exchange's proposed rule change would expand the Short Term Option Series Program to permit BOX to open for trading, on any Tuesday or Wednesday that is a business day, series of options on SPY that expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations”).[6] Wednesday SPY Expirations would be subject to the same rules as the standard Short Term Option Series program,[7] with two exceptions. The Exchange proposes that the current limitation of no more than five Short Term Option Series expiration dates in a class [8] would not include any Wednesday SPY Expiration. Instead, the Exchange proposes a separate limit of five consecutive Wednesday SPY expiration dates [9] so that the Exchange could list five Short Term Option Series expiration dates for SPY expiring on Friday as well as five Wednesday SPY Expiration dates.[10] In addition, unlike other option series in the Short Term Option Series program, Wednesday SPY Expirations could expire in the same week in which monthly option series in the same class expire.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b) of the Act.[12] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY options, thus allowing them to better manage their risk exposure.

In approving this proposal, the Commission notes that the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in Wednesday SPY Expirations.[14] The Exchange further states that it has the necessary systems capacity to support the new options series.[15]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–BOX–2016–28) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20737 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* IM–5050–6 to BOX Rule 5050.

[4] *See* Securities Exchange Act Release No. 78243 (July 7, 2016), 81 FR 45346 (July 13, 2016) (“Notice”).

[5] *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010).

[6] Under the proposal, the Exchange would expand the definition of “Short Term Option Series” in BOX Rule 100(a)(64) and add a description of Wednesday SPY Expirations in proposed IM–5050–6(c) to BOX Rule 5050. For further details, see Notice, *supra* note 4, at 45346.

[7] For example, Wednesday SPY Expirations would be subject to the same series limitations and strike interval rules as standard Short Term Option Series and would be P.M.-settled. See IM–5050–6(b) to BOX Rule 5050. *See also* Notice, *supra* note 4, at 45346–47.

[8] See IM–5050–6(a) to BOX Rule 5050.

[9] See proposed IM–5050–6(c) to BOX Rule 5050.

[10] *See* Notice, *supra* note 4, at 45346.

[11] *See id.*

[12] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Notice, *supra* note 4, at 45347.

[15] *See id.*

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78663; File No. SR–NYSEMKT–2016–80]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc.

August 24, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the “Act”) [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 17, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Second Amended and Restated Certificate of Incorporation (the "ICE Certificate") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to increase ICE's authorized share capital, and to make other, non-substantive changes. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments would revise the ICE Certificate[4] to increase the total number of authorized shares of ICE common stock, par value $0.01 per share ("Common Stock"), and make other, non-substantive changes. More specifically, the Exchange proposes to make the following amendments to the ICE Certificate:

- In Article IV, Section A, the total number of shares of stock that ICE is authorized to issue would be changed from 600,000,000 to 1,600,000,000 shares, and the portion of that total constituting Common Stock would be changed from 500,000,000 to 1,500,000,000 shares.
- In Article V, Section A.5, the reference to "this Section A of ARTICLE VI" would be corrected to refer to "this Section A of ARTICLE V".
- References to the "Second Amended and Restated Certificate of Incorporation" would be changed throughout to refer to the "Third Amended and Restated Certificate of Incorporation", and related technical and conforming changes would be made to the recitals and signature page of the ICE Certificate.

The proposed amendments to the ICE Certificate were approved by the board of directors of ICE ("ICE Board") on August 1, 2016. The Exchange proposes that the above amendments to the ICE Certificate would be effective when filed with the Department of State of Delaware, which would not occur until approval of the amendments by the stockholders of ICE is obtained at a Special Meeting of Stockholders on October 12, 2016.

The trading price of ICE's Common Stock has risen significantly since ICE's initial public offering in 2005,[5] and the ICE Board believes that such price appreciation may impact the liquidity of ICE's Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the ICE Board approved pursuing a 5-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, four shares of Common Stock for each share of Common Stock held by such holder (the "Stock Dividend"). The ICE Board's approval of the Stock Dividend was contingent upon Commission and ICE stockholder approval of the proposed amendments to the ICE Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds ICE's authorized but unissued shares of Common Stock. The proposed rule change would increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend.

The proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate. Such limitations were introduced at the time of ICE's acquisition of the Exchange, to "minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[7] in general, and Section 6(b)(1) of the Exchange Act,[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate, and so the proposed changes would not enable a person to "improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[9]

For similar reasons, the proposal is consistent with Section 6(b)(5) of the Exchange Act,[10] because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

---

[4] ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates New York Stock Exchange LLC and NYSE Arca, Inc. ICE is a publicly traded company listed on the Exchange's affiliate New York Stock Exchange LLC. The Exchange's affiliates, New York Stock Exchange LLC and NYSE Arca, Inc., have each submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–57 and SR–NYSEArca–2016–119.

[5] The closing price of ICE's Common Stock on July 29, 2016, the trading date prior to the ICE Board vote to approve the proposal, was $264.20. The price of ICE's Common Stock at its initial public offering on November 16, 2005, was $26.00.

[6] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE– 2013–42; SR–NYSEMKT–2013–50; and SR– NYSEArca–2013–62), at 51760. ICE was previously named IntercontinentalExchange Group, Inc. *See* Securities Exchange Act Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR–NYSEMKT– 2014–41).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] *See* Securities Exchange Act Release No. 70210, *supra* note 6, at 51760.

[10] 15 U.S.C. 78f(b)(5).

The Exchange believes that approval of the proposal would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because by increasing ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of ICE.

The Exchange believes that amending Article V, Section A.5, to correct the reference to "this Section A of ARTICLE VI" to refer to "this Section A of ARTICLE V" would reduce potential confusion that may result from having an incorrect reference in the ICE Certificate. Replacing such incorrect reference would further the goal of transparency and add clarity to the ICE Certificate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the number of authorized shares of Common Stock and shares of capital stock of the Exchange's ultimate parent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–80, and should be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20732 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 1, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 25, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–20952 Filed 8–26–16; 4:15 pm]

BILLING CODE 8011–01–P

---

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78661; File No. SR–NYSE–2016–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Second Amended and Restated Certificate of Incorporation of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc.

August 24, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 17, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and restate the Second Amended and Restated Certificate of Incorporation (the "ICE Certificate") of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to increase ICE's authorized share capital, and to make other, non-substantive changes. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments would revise the ICE Certificate[4] to increase the total number of authorized shares of ICE common stock, par value $0.01 per share ("Common Stock"), and make other, non-substantive changes. More specifically, the Exchange proposes to make the following amendments to the ICE Certificate:

- In Article IV, Section A, the total number of shares of stock that ICE is authorized to issue would be changed from 600,000,000 to 1,600,000,000 shares, and the portion of that total constituting Common Stock would be changed from 500,000,000 to 1,500,000,000 shares.
- In Article V, Section A.5, the reference to "this Section A of ARTICLE VI" would be corrected to refer to "this Section A of ARTICLE V".
- References to the "Second Amended and Restated Certificate of Incorporation" would be changed throughout to refer to the "Third Amended and Restated Certificate of Incorporation", and related technical and conforming changes would be made to the recitals and signature page of the ICE Certificate.

The proposed amendments to the ICE Certificate were approved by the board of directors of ICE ("ICE Board") on August 1, 2016. The Exchange proposes that the above amendments to the ICE Certificate would be effective when filed with the Department of State of Delaware, which would not occur until approval of the amendments by the stockholders of ICE is obtained at a Special Meeting of Stockholders on October 12, 2016.

The trading price of ICE's Common Stock has risen significantly since ICE's initial public offering in 2005,[5] and the ICE Board believes that such price appreciation may impact the liquidity of ICE's Common Stock, making it more difficult to efficiently trade and potentially less attractive to certain investors. Accordingly, the ICE Board approved pursuing a 5-for-1 stock split by way of a stock dividend, pursuant to which the holders of record of shares of Common Stock would receive, by way of a dividend, four shares of Common Stock for each share of Common Stock held by such holder (the "Stock Dividend"). The ICE Board's approval of the Stock Dividend was contingent upon Commission and ICE stockholder approval of the proposed amendments to the ICE Certificate.

The number of shares of Common Stock proposed to be issued in the Stock Dividend exceeds ICE's authorized but unissued shares of Common Stock. The proposed rule change would increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend.

The proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate. Such limitations were introduced at the time of ICE's acquisition of the Exchange, to "minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[7] in general, and Section 6(b)(1) of the Exchange Act,[8] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposal to increase ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend would not impact the Exchange's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Section V of the ICE Certificate, and so the proposed changes would not enable a person to "improperly interfere with or restrict the ability of the Commission, the Exchange, or its subsidiaries to effectively carry out their regulatory oversight responsibilities under the Act."[9]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ICE owns 100% of the equity interest in Intercontinental Exchange Holdings, Inc., which in turn owns 100% of the equity interest in NYSE Holdings LLC. NYSE Holdings LLC owns 100% of the equity interest of NYSE Group, Inc., which in turn directly owns 100% of the equity interest of the Exchange and its affiliates NYSE Arca, Inc. and NYSE MKT LLC. ICE is a publicly traded company listed on the Exchange. The Exchange's affiliates, NYSE MKT LLC and NYSE Arca, Inc., have each submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2016–80 and SR–NYSEArca–2016–119.

[5] The closing price of ICE's Common Stock on July 29, 2016, the trading date prior to the ICE Board vote to approve the proposal, was $264.20. The price of ICE's Common Stock at its initial public offering on November 16, 2005, was $26.00.

[6] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42; SR–NYSEMKT–2013–50; and SR–NYSEArca–2013–62), at 51760. ICE was previously named IntercontinentalExchange Group, Inc. *See* Securities Exchange Act Release No. 72158 (May 13, 2014), 79 FR 28784 (May 19, 2014) (SR–NYSE–2014–23).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

For similar reasons, the proposal is consistent with Section 6(b)(5) of the Exchange Act,[10] because it would not impact the Exchange's governance or regulatory structure, which would continue to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that approval of the proposal would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because by increasing ICE's authorized shares of Common Stock and shares of capital stock sufficient to allow ICE to effectuate the Stock Dividend, the proposed rule change will facilitate broader ownership of ICE.

The Exchange believes that amending Article V, Section A.5, to correct the reference to "this Section A of ARTICLE VI" to refer to "this Section A of ARTICLE V" would reduce potential confusion that may result from having an incorrect reference in the ICE Certificate. Replacing such incorrect reference would further the goal of transparency and add clarity to the ICE Certificate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not designed to address any competitive issue but rather is concerned solely with the number of authorized shares of Common Stock and shares of capital stock of the Exchange's ultimate parent.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–57, and should be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20742 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[9] *See* Securities Exchange Act Release No. 70210, *supra* note 6, at 51760.

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78666; File No. SR–BatsBZX–2016–48]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rule 14.11(c)(4) To List and Trade Shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF of the iShares U.S. ETF Trust

August 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to list and trade under BZX Rule 14.11(c)(4) shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF (each a "Fund" or, collectively, the "Funds") of the iShares U.S. ETF Trust (the "Trust"). The shares of the Funds are referred to herein as the "Shares."

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the following series of the Trust under BZX Rule 14.11(c)(4),[3] which governs the listing and trading of index fund shares based on fixed income securities indexes.[4]

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on March 15, 2001. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A ("Registration Statement") with the Commission.[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

Description of the Shares and the Funds

BlackRock Fund Advisors is the investment adviser ("BFA" or "Adviser") to the Funds.[6] State Street Bank and Trust Company is the administrator, custodian, and transfer agent ("Administrator," "Custodian," and "Transfer Agent," respectively) for the Trust. BlackRock Investments, LLC serves as the distributor ("Distributor") for the Trust.

iShares iBonds Dec 2023 Term Muni Bond ETF

According to the Registration Statement, the Fund will seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the S&P AMT-Free Municipal Series Dec 2023 Index (the "2023 Index"). As of July 18, 2016, there were 4,612 issues in the 2023 Index. Unless otherwise noted, all statistics related to the 2023 Index presented hereafter were accurate as of July 18, 2016.

To be included in the 2023 Index, a bond must have a rating of at least BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch (except in the case of a pre-refunded/escrowed to maturity bond). A bond must be rated by at least one of the three rating agencies in order to qualify for index inclusion. For the avoidance of doubt, the lowest rating is used in determining if a bond is investment grade. Potential constituents must have an outstanding par value of at least $2 million. The bonds will have a maturity range of January 1, 2023 to December 1, 2023. The following types of bonds are excluded from the 2023 Index: Bonds subject to the alternative minimum tax, bonds with early redemption dates (callable provisions), bonds with sinking fund provisions, commercial paper, conduit bonds where the obligor is a for-profit institution, derivative securities, non-rated bonds (except pre-refunded/escrowed to maturity bonds), notes, taxable municipals, tobacco bonds, and variable rate debt (except for known step-up/down coupon schedule bonds). The 2023 Index is calculated using a market value weighting methodology. The composition of the 2023 Index is rebalanced monthly.

The Fund generally invests at least 90% of its assets in the component securities of the Fund's benchmark index, except during the last months of the Fund's operations. From time to time when conditions warrant, however, the Fund may invest at least 80% of its assets in the component securities of the Fund's benchmark index. The 2023 Index measures the performance of the non-callable investment-grade, tax-exempt U.S. municipal bonds with specific annual maturities ("Municipal Securities"). The Fund has adopted a non-fundamental investment policy to invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities in the Fund's benchmark index. This policy may be changed without shareholder approval upon 60 days' prior written notice to shareholders.[7] Municipal

---

[3] The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[4] The Commission previously has approved a proposed rule change relating to listing and trading of funds based on municipal bond indexes. *See* Securities Exchange Act Release Nos. 78329 (July 14, 2016), 81 FR 47217 (July 20, 2016) (SR–BatsBZX–2016–01) (order approving proposed rule change relating to the listing and trading of VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF, VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF, and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF); 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca, Inc. ("NYSE Arca") Rule 5.2(j)(3), Commentary .02); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR–NYSEArca–2014–37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-Free Municipal Series under NYSE Arca Rule 5.2(j)(3), Commentary .02); and 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR–NYSEArca–2015–25) (order approving proposed rule change relating to the listing and trading of the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under NYSE Arca Rule 5.2(j)(3), Commentary .02). The Commission also has issued a notice of filing and immediate effectiveness of a proposed rule change relating to listing and trading on the Exchange of the iShares Taxable Municipal Bond Fund. *See* Securities Exchange Act Release No. 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94). The Commission has approved two actively managed funds of the PIMCO ETF Trust that hold municipal bonds. *See* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of PIMCO ShortTerm Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund, among others). The Commission also has approved listing and trading on the Exchange of the SPDR Nuveen S&P High Yield Municipal Bond Fund. *See* Securities Exchange Act Release No. 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

[5] *See* Registration Statement on Form N–1A for the Trust, dated October 29, 2015 (File Nos. 333–123257 and 811–10325). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") (the "Exemptive Order"). *See* Investment Company Act Release No. 28021 (October 24, 2007) (File No. 812–13426).

[6] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

[7] As noted herein, each Fund's policy to invest 80% of its total assets in securities that comprise the Fund's benchmark index (the "80% Investment Policy") is non-fundamental and may be changed without shareholder approval upon 60 days' prior

Continued

Securities are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[8] limited obligation bonds (or revenue bonds),[9] municipal notes,[10] municipal commercial paper,[11] tender option bonds,[12] variable rate demand obligations ("VRDOs"),[13] municipal lease obligations,[14] stripped securities,[15] structured securities,[16] and zero coupon securities.[17]

In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of money market funds advised by BFA or its affiliates ("BlackRock Cash Funds"), AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper. These cash equivalents may not be included in the Underlying Index. By December 2, 2023, the Underlying Index is expected to consist entirely of cash earned in this manner. Around the same time, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

The Fund intends to qualify for and to elect treatment as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[18] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, "Repurchase Agreements"). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[19]

The Fund may also invest in short-term instruments ("Short-Term Instruments"),[20] which include exchange traded and non-exchange traded investment companies (including investment companies advised by BFA

---

written notice to shareholders. The Exchange notes that, notwithstanding the foregoing, all statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets (including, for example, each Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. As noted below, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements (or any changes made with respect to a Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

[8] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[9] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

[10] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[11] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[12] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[13] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[14] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[15] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[16] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[17] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[18] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

[19] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[20] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit ("CDs"), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.*, bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

or its affiliates) that invest in money market instruments.

Index Overview

The Exchange is submitting this proposed rule change because the 2023 Index for the Fund does not meet all of the "generic" listing requirements of Rule 14.11(c)(4) applicable to the listing of index fund shares based on fixed income securities indexes. The 2023 Index meets all such requirements except for those set forth in Rule 14.11(c)(4)(B)(i)(b).[21] Specifically, as of July 18, 2016, 5.83% of the weight of the 2023 Index components have a minimum original principal amount outstanding of $100 million or more.

As of July 18, 2016, 73.56% of the weight of the 2023 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total face amount outstanding of issues in the 2023 Index was approximately $38.5 billion, the market value was $46.4 billion, and the average dollar amount outstanding of issues in the 2023 Index was approximately $8.3 million. Further, the most heavily weighted component represented 1.61% of the weight of the 2023 Index and the five most heavily weighted components represented 3.66% of the weight of the 2023 Index.[22] Therefore, the Exchange believes that, notwithstanding that the 2023 Index does not satisfy the criterion in Rule 14.11(c)(4)(B)(i)(b), the 2023 Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 4,612 issues. In addition, the 2023 Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (73.56%) of the 2023 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of the 2023 Index issues, as referenced above.[23] 48% of the 2023 Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 2023 Index value, calculated and disseminated at least once daily, as well as the components of the 2023 Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.iShares.com.*

iShares iBonds Dec 2024 Term Muni Bond ETF

According to the Registration Statement, the Fund will seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the S&P AMT-Free Municipal Series Dec 2024 Index (the "2024 Index"). As of July 18, 2016, there were 3,624 issues in the 2024 Index. Unless otherwise noted, all statistics related to the 2024 Index presented hereafter were accurate as of July 18, 2016.

To be included in the 2024 Index, a bond must have a rating of at least BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch (except in the case of a pre-refunded/escrowed to maturity bond). A bond must be rated by at least one of the three rating agencies in order to qualify for index inclusion. For the avoidance of doubt, the lowest rating is used in determining if a bond is investment grade. Potential constituents must have an outstanding par value of at least $2 million. The bonds will have a maturity range of January 1, 2024 to December 1, 2024. The following types of bonds are excluded from the 2024 Index: Bonds subject to the alternative minimum tax, bonds with early redemption dates (callable provisions), bonds with sinking fund provisions, commercial paper, conduit bonds where the obligor is a for-profit institution, derivative securities, non-rated bonds (except pre-refunded/escrowed to maturity bonds), notes, taxable municipals, tobacco bonds, and variable rate debt (except for known step-up/down coupon schedule bonds). The 2024 Index is calculated using a market value weighting methodology. The composition of the 2024 Index is rebalanced monthly.

The Fund generally invests at least 90% of its assets in the component securities of the Fund's benchmark index, except during the last months of the Fund's operations. From time to time when conditions warrant, however, the Fund may invest at least 80% of its assets in the component securities of the Fund's benchmark index. The 2024 Index measures the performance of the non-callable investment-grade, tax-exempt U.S. municipal bonds with specific annual maturities ("Municipal Securities"). The Fund has adopted a non-fundamental investment policy to invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities in the Fund's benchmark index. This policy may be changed without shareholder approval upon 60 days' prior written notice to shareholders.[24] Municipal Securities are fixed and variable rate securities issued in the U.S. by U.S. states and territories, municipalities and other political subdivisions, agencies, authorities, and instrumentalities of states and multi-state agencies and authorities and will include only the following instruments: General obligation bonds,[25] limited obligation bonds (or revenue bonds),[26] municipal notes,[27] municipal commercial paper,[28] tender option bonds,[29] variable rate demand obligations (''VRDOs''),[30] municipal lease obligations,[31] stripped securities,[32] structured securities,[33] and zero coupon securities.[34]

---

[21] Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[22] Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[23] The Adviser represents that when bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid.

[24] As noted herein, each Fund's policy to invest 80% of its total assets in securities that comprise the Fund's benchmark index (the "80% Investment Policy") is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders. The Exchange notes that, notwithstanding the foregoing, all statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets (including, for example, each Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. As noted below, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements (or any changes made with respect to a Fund's 80% Investment Policy), and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

[25] General obligation bonds are obligations involving the credit of an issuer possessing taxing power and are payable from such issuer's general revenues and not from any particular source.

[26] Limited obligation bonds are payable only from the revenues derived from a particular facility or class of facilities or, in some cases, from the proceeds of a special excise or other specific revenue source, and also include industrial development bonds issued pursuant to former U.S. federal tax law. Industrial development bonds generally are also revenue bonds and thus are not payable from the issuer's general revenues. The credit and quality of industrial development bonds are usually related to the credit of the corporate user of the facilities. Payment of interest on and repayment of principal of such bonds is the responsibility of the corporate user (and/or any guarantor).

In the last months of operation, as the bonds held by the Fund mature, the proceeds will not be reinvested in bonds but instead will be held in cash and cash equivalents, including, without limitation, shares of BlackRock Cash Funds, AMT-free tax-exempt municipal notes, variable rate demand notes and obligations, tender option bonds and municipal commercial paper. These cash equivalents may not be included in the Underlying Index. By December 2, 2023, the Underlying Index is expected to consist entirely of cash earned in this manner. Around the same time, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders.

The Fund intends to qualify for and to elect treatment as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Other Portfolio Holdings

The Fund may also, to a limited extent (under normal circumstances, less than 20% of the Fund's net assets), engage in transactions in futures contracts, options, or swaps in order to facilitate trading or to reduce transaction costs.[35] The Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns (*i.e.* two times or three times the Fund's benchmark, as described in the Registration Statement).

The Fund may also enter into repurchase and reverse repurchase agreements for Municipal Securities (collectively, ''Repurchase Agreements''). Repurchase Agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing as part of the Fund's principal holdings.[36]

The Fund may also invest in short-term instruments (''Short-Term Instruments''),[37] which include exchange traded and non-exchange traded investment companies (including investment companies advised by BFA or its affiliates) that invest in money market instruments.

Index Overview

The Exchange is submitting this proposed rule change because the 2024 Index for the Fund does not meet all of the ''generic'' listing requirements of Rule 14.11(c)(4) applicable to the listing of index fund shares based on fixed income securities indexes. The 2024 Index meets all such requirements except for those set forth in Rule 14.11(c)(4)(B)(i)(b).[38] Specifically, as of July 18, 2016, 5.72% of the weight of the 2024 Index components have a minimum original principal amount outstanding of $100 million or more.

As of July 18, 2016, 72.27% of the weight of the 2024 Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding $100 million or more for all maturities of the offering. In addition, the total face amount outstanding of issues in the 2024 Index was approximately $29.9 billion, the market value is $36.4 billion, and the average dollar amount outstanding of issues in the 2024 Index was approximately $8.3 million. Further, the most heavily weighted component represented 0.72% of the weight of the 2024 Index and the five most heavily weighted components represented 2.74% of the weight of the 2024 Index.[39] Therefore, the Exchange believes that, notwithstanding that the

---

[27] Municipal notes are shorter-term municipal debt obligations that may provide interim financing in anticipation of tax collection, receipt of grants, bond sales, or revenue receipts.

[28] Municipal commercial paper is generally unsecured debt that is issued to meet short-term financing needs.

[29] Tender option bonds are synthetic floating-rate or variable-rate securities issued when long-term bonds are purchased in the primary or secondary market and then deposited into a trust. Custodial receipts are then issued to investors, such as the Fund, evidencing ownership interests in the trust.

[30] VRDOs are tax-exempt obligations that contain a floating or variable interest rate adjustment formula and a right of demand on the part of the holder thereof to receive payment of the unpaid principal balance plus accrued interest upon a short notice period not to exceed seven days.

[31] Municipal lease obligations include certificates of participation issued by government authorities or entities to finance the acquisition or construction of equipment, land, and/or facilities.

[32] Stripped securities are created when an issuer separates the interest and principal components of an instrument and sells them as separate securities. In general, one security is entitled to receive the interest payments on the underlying assets and the other to receive the principal payments.

[33] Structured securities are privately negotiated debt obligations where the principal and/or interest is determined by reference to the performance of an underlying investment, index, or reference obligation, and may be issued by governmental agencies. While structured securities are part of the principal holdings of the Fund, the Issuer represents that such securities, when combined with those instruments held as part of the other portfolio holdings described below, will not exceed 20% of the Fund's net assets.

[34] Zero coupon securities are securities that are sold at a discount to par value and do not pay interest during the life of the security. The discount approximates the total amount of interest the security will accrue and compound over the period until maturity at a rate of interest reflecting the market rate of the security at the time of issuance. Upon maturity, the holder of a zero coupon security is entitled to receive the par value of the security.

[35] Derivatives might be included in the Fund's investments to serve the investment objectives of the Fund. Such derivatives include only the following: Interest rate futures, interest rate options, interest rate swaps, and swaps on Municipal Securities indexes. The derivatives will be centrally cleared and they will be collateralized. Derivatives are not a principal investment strategy of the Fund.

[36] The Fund's exposure to reverse repurchase agreements will be covered by liquid assets having a value equal to or greater than such commitments. The use of reverse repurchase agreements is a form of leverage because the proceeds derived from reverse repurchase agreements may be invested in additional securities. As further stated below, the Fund's investments will be consistent with its investment objective and will not be used to achieve leveraged returns.

[37] The Fund may invest in Short-Term Instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that include only the following: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper, including asset-backed commercial paper; (v) non-convertible corporate debt securities (*e.g.*, bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Fund. All money market securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated money market securities. However, it may do so, to a limited extent, such as where a rated money market security becomes unrated, if such money market security is determined by the Adviser to be of comparable quality. BFA may determine that unrated securities are of comparable quality based on such credit quality factors that it deems appropriate, which may include, among other things, performing an analysis similar, to the extent possible, to that performed by a nationally recognized statistical rating organization rating similar securities and issuers.

[38] Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[39] Rule 14.11(c)(4)(B)(i)(d) provides that no component fixed-income security (excluding Treasury Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

2024 Index does not satisfy the criterion in Rule 14.11(c)(4)(B)(i)(b), the 2024 Index is sufficiently broad-based to deter potential manipulation, given that it is comprised of approximately 3,624 issues. In addition, the 2024 Index securities are sufficiently liquid to deter potential manipulation in that a substantial portion (72.27%) of the 2024 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of the 2024 Index issues, as referenced above.[40] 47.71% of the 2024 Index weight consisted of issues with a rating of AA/Aa2 or higher.

The 2024 Index value, calculated and disseminated at least once daily, as well as the components of the 2024 Index and their percentage weighting, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund's Web site at *www.iShares.com.*

Correlation Among Municipal Bond Instruments With Common Characteristics

With respect to the Funds, the Adviser represents that the nature of the municipal bond market and municipal bond instruments makes it feasible to categorize individual issues represented by CUSIPs (*i.e.,* the specific identifying number for a security) into categories according to common characteristics, specifically, rating, geographical region, purpose, and maturity. Bonds that share similar characteristics tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective, allowing one CUSIP to be represented by another that shares similar characteristics for purposes of developing an investment strategy. Therefore, while 5.83% of the weight of the 2023 Index and 5.72% of the 2024 Index components have a minimum original principal amount outstanding of $100 million or more, the nature of the municipal bond market makes the issues relatively fungible for investment purposes when aggregated into categories such as ratings, geographical region, purpose and maturity. In addition, within a single municipal bond issuer, there are often multiple contemporaneous or sequential issuances that have the same rating, structure and maturity, but have different CUSIPs; these separate issues by the same issuer are also likely to trade similarly to one another.

The Adviser represents that the Funds are managed utilizing the principle that municipal bond issues are generally fungible in nature when sharing common characteristics, and specifically make use of the four categories referred to above. In addition, this principle is used in, and consistent with, the portfolio construction process in order to facilitate the creation and redemption process, and to enhance liquidity (among other benefits, such as reducing transaction costs), while still allowing each Fund to closely track its reference index.

Net Asset Value

According to the Registration Statement, the net asset value ("NAV") of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern time) on the Exchange. Any assets or liabilities denominated in currencies other than the U.S. dollar are converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The values of each Fund's portfolio securities are based on the securities' closing prices, when available. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Municipal Securities, repurchase agreements, reverse repurchase agreements, and money market instruments with maturities of more than 60 days are normally valued on the basis of quotes from brokers or dealers, established market makers or an outside independent pricing service. Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities. Short-term investments, including money market instruments having a maturity of 60 days or less, are valued at amortized cost. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded. Swaps will be valued based on valuations provided by independent, third-party pricing agents. Securities of non-exchange-traded investment companies will be valued at NAV. Exchange-traded investment companies will be valued at the last reported sale price on the primary exchange on which they are traded.

Creation and Redemption of Shares

The NAV of the Funds will be determined each business day as of the close of trading, (normally 4:00 p.m. Eastern time) on the exchange. The Funds currently anticipate that a "Creation Unit" will consist of 50,000 Shares, though this number may change from time to time, including prior to the listing of a Fund. The exact number of Shares that will comprise a Creation Unit will be disclosed in the Registration Statement of each Fund. The Trust will issue and sell Shares of the Funds only in Creation Units on a continuous basis through the Distributor, without an initial sales load (but subject to transaction fees), at their NAV per Share next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of a Creation Unit of a Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of fixed income securities (the "Deposit Securities") per each Creation Unit and the Cash Component (defined below), computed as described below, or (ii) as permitted or required by the Funds, of cash. The Cash Component together with the Deposit Securities, as applicable, are referred to as the "Fund Deposit," which represents the minimum initial and subsequent investment amount for Shares. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of Deposit Securities and may include a Dividend Equivalent Payment. The "Dividend Equivalent Payment" enables the Funds to make a complete distribution of dividends on the next dividend payment date, and is an amount equal, on a per Creation Unit basis, to the dividends on all the securities held by each of the Funds ("Fund Securities") with ex-dividend dates within the accumulation period for such distribution (the "Accumulation Period"), net of expenses and liabilities for such period, as if all of the Fund Securities had been held by the Trust for the entire Accumulation Period. The Accumulation Period begins on the ex-dividend date for each Fund and ends on the next ex-dividend date.

---

[40] The Adviser represents that when bonds are close substitutes for one another, pricing vendors can use executed trade information from all similar bonds as pricing inputs for an individual security. This can make individual securities more liquid.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), makes available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) as well as the Cash Component for each Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of each Fund until such time as the next-announced Fund Deposit composition is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor,[41] only on a business day and only through a Participating Party or DTC Participant who has executed a Participation Agreement.

The Administrator, through NSCC, makes available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time) on each day that the Exchange is open for business, the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day.

Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and variable fees described below. Should the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. Each Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Fund Securities.[42]

Orders to redeem Creation Units of the Funds must be delivered through a DTC Participant that has executed the Participant Agreement with the Distributor and with the Trust. A DTC Participant who wishes to place an order for redemption of Creation Units of a Fund to be effected need not be a Participating Party, but such orders must state that redemption of Creation Units of the Fund will instead be effected through transfer of Creation Units of the Fund directly through DTC. An order to redeem Creation Units of a Fund is deemed received by the Administrator on the transmittal date if (i) such order is received by the Administrator not later than 4:00 p.m. Eastern time on such transmittal date; (ii) such order is preceded or accompanied by the requisite number of Shares of Creation Units specified in such order, which delivery must be made through DTC to the Administrator no later than 11:00 a.m. Eastern time, on such transmittal date (the "DTC Cut-Off-Time"); and (iii) all other procedures set forth in the Participant Agreement are properly followed.

After the Administrator has deemed an order for redemption received, the Administrator will initiate procedures to transfer the requisite Fund Securities (or contracts to purchase such Fund Securities) which are expected to be delivered within three business days and the cash redemption payment to the redeeming beneficial owner by the third business day following the transmittal date on which such redemption order is deemed received by the Administrator.

Availability of Information

Each Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, daily trading volume, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Funds will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours[43] on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Funds that formed the basis for each Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: the ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The Web site and information will be publicly available at no charge. The value, components, and percentage weightings of each of the Indices will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Indices are available on Barclays' Web site and in each respective Fund's prospectus.

In addition, for each Fund, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the "Intraday Indicative Value," that reflects an estimated intraday value of each Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[44] In addition, the quotations of certain of each Fund's holdings may not be updated during U.S. trading hours if updated prices cannot be ascertained.

---

[41] To be eligible to place orders with the Distributor to create Creation Units of the Funds, an entity or person either must be: (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the Clearing Process through the Continuous Net Settlement System of the NSCC; or (2) a DTC Participant (as defined below); and, in either case, must have executed an agreement with the Distributor and the Transfer Agent (as it may be amended from time to time in accordance with its terms) ("Participant Agreement"). DTC Participants are participants of the Depository Trust Company ("DTC") that acts as securities depositary for Index Fund Shares. A Participating Party and DTC Participant are collectively referred to as an "Authorized Participant."

[42] The Adviser represents that, to the extent that the Trust permits or requires a "cash in lieu" amount, such transactions will be effected in the same or equitable manner for all Authorized Participants.

[43] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[44] Currently, it is the Exchange's understanding that several major market data vendors display and/

The dissemination of the Intraday Indicative Value, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares of each Fund will be available via the CTA high speed line. Quotation information for investment company securities (excluding ETFs) may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding Municipal Securities and non-exchange traded assets, including investment companies, derivatives, money market instruments, repurchase agreements, and reverse repurchase agreements is available from third party pricing services and major market data vendors. For exchange-traded assets, including investment companies, futures, and options, such intraday information is available directly from the applicable listing exchange.

Initial and Continued Listing

The Shares of each Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(c)(4), except for those set forth in 14.11(c)(4)(B)(i)(b). The Exchange represents that, for initial and/or continued listing, the Funds and the Trust must be in compliance with Rule 10A–3 under the Act.[45] A minimum of 50,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[46] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, futures, and options from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening[47] and After Hours Trading Sessions[48] when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and

---

or make widely available Intraday Indicative Values published via the Consolidated Tape Association ("CTA") or other data feeds.

[45] *See* 17 CFR 240.10A–3.

[46] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[47] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[48] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' Web site. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in each Fund's Registration Statement.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[49] in general and Section 6(b)(5) of the Act[50] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the listing criteria in BZX Rule 14.11(c). The Exchange believes that its surveillances, which generally focus on detecting securities trading outside of their normal patterns which could be indicative of manipulative or other violative activity, and associated surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance group ("ISG"), and may obtain trading information regarding trading in the Shares from such markets or entities. The Exchange can also access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Exchange is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange-traded investment companies, futures, and options from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Index Provider is not a broker-dealer, but is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Indices. The Index Provider has also implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indices.

As of July 18, 2016, the 2023 Index had the following characteristics: there were 4,612 issues; 5.83% of the weight of components had a minimum original principal amount outstanding of $100 million or more; 73.56% of the weight of components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering; total face amount outstanding of issues in the 2023 Index was approximately $38.5 billion, the market value is $46.4 billion, and the average dollar amount outstanding per issue was approximately $8.3 million; the most heavily weighted component represented 1.61% of the 2023 Index and the five most heavily weighted components represented 3.66% of the 2023 Index. Therefore, the Exchange believes that, notwithstanding that the 2023 Index does not satisfy the criterion in BZX Rule 14.11(c)(4)(B)(i), the 2023 Index is sufficiently broad-based to deter potential manipulation in that a substantial portion (73.56%) of the 2023 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of index issues.

As of July 18, 2016, the 2024 Index had the following characteristics: there were 3,624 issues; 5.72% of the weight of components had a minimum original principal amount outstanding of $100 million or more; 72.27% of the weight of components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering; the total face amount outstanding of issues in the 2024 Index was approximately $29.9 billion, the market value is $36.4 billion, and the average dollar amount outstanding of issues in the 2024 Index was approximately $8.3 million; the most heavily weighted component represented 0.72% of the 2024 Index and the five most heavily weighted components represented 2.74% of the 2024 Index. Therefore, the Exchange believes that, notwithstanding that the 2024 Index does not satisfy the criterion in BZX Rule 14.11(c)(4)(B)(i), the 2024 Index is sufficiently broad-based to deter potential manipulation in that a substantial portion (72.27%) of the 2024 Index weight is comprised of maturities that are part of a minimum original principal amount outstanding of $100 million or more, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of index issues.

The value, components, and percentage weightings of each of the Indices will be calculated and disseminated at least once daily and will be available from major market data vendors. In addition, the portfolio of securities held by the Funds will be disclosed on the Funds' Web site at *www.iShares.com.* The intraday indicative value for Shares of the Funds will be disseminated by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. The Adviser represents that bonds that share similar characteristics, as described above, tend to trade similarly to one another; therefore, within these categories, the issues may be considered fungible from a portfolio management perspective. Within a single municipal bond issuer, [sic] Adviser represents that separate issues by the same issuer are also likely to trade similarly to one another.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. The current value of each of the Indices will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Members in an information circular of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of each Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted. If the IIV of any of the Funds or value of the Indices are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs.

---

[49] 15 U.S.C. 78f.

[50] 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of exchange-traded funds that holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information in the Shares and the underlying shares in exchange-traded investment companies, futures, and options via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) by order approve or disapprove such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-BatsBZX–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–48 and should be submitted on or before September 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20735 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32235; 812–14678]

iShares Trust, et al.; Notice of Application

August 24, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

SUMMARY: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) series of certain open-end management investment companies that track the performance of an index provided by an affiliated person ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: iShares Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and iShares, Inc. (the "Corporation"), a Maryland corporation registered under the Act as an open-end management investment company with multiple series, (each a "Company," and, together, the "Companies"), BlackRock Fund Advisors (the "Initial Adviser"), a California corporation registered as an investment adviser under the Investment Advisers Act of 1940, and BlackRock Investments, LLC (the "Distributor"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on July 22, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 19, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Deepa Damre, Esq., BlackRock Fund Advisors, 400 Howard Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Mary Kay Frech, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as exchange traded funds ("ETFs") that track an Underlying Index provided by an Affiliated Index Provider (as defined below).[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. An affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of a Company or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index (an "Affiliated Index Provider").[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment

---

[1] Applicants request that the order apply to a new series and any additional series of a Company, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application.

[2] Each Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring the Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20739 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78644; File No. SR–NYSEArca–2016–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the First Trust Horizon Managed Volatility Domestic ETF and the First Trust Horizon Managed Volatility Developed International ETF Under NYSE Arca Equities Rule 8.600

August 23, 2016.

On June 16, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the First Trust Horizon Managed Volatility Domestic ETF and the First Trust Horizon Managed Volatility Developed International ETF. The proposed rule change was published for comment in the **Federal Register** on July 6, 2016.[3] On July 18, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On August 16, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission received no comment letters on the proposed rule change.

On August 18, 2016, the Exchange withdrew the proposed rule change, as modified by Amendment No. 1 (SR–NYSEArca–2016–87).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20740 Filed 8–29–16; 8:45 am]

BILLING CODE 8011–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78191 (June 29, 2016), 81 FR 44056.

[4] Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysearca-2016-87/nysearca201687-1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 78587, 81 FR 56728 (August 22, 2016).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before September 29, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The 8(a) BD Program is designed to enhance the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business. In an effort to increase the 8(a) BD Program's accessibility to socially and economically disadvantaged small business owners, and reduce the burden on these small businesses, SBA has amended Form 1010–BUsiness (8(a)Business Development Program Application) and Form 1010–Individual (Individual Information). SBA has clarified and simplified instructions, and streamlined the information collected from applicants and participants, including eliminating information that was deemed unnecessary or could be obtained from other sources available to the agency.

Title: 8(A) SDB Paper and Electronic Application.

Abstract: The Small Business Administration needs to collect this information to determine an applicant's eligibility for admission into the 8(a) Business Development (BD) Program and for continued eligibility to participate in the Program. SBA also uses some of the information for an annual report to Congress on the 8(a) BD Program. Respondents can be individuals and firms making applications to the 8(a) BD Program, or respondents can be individuals and Participant firms revising information related to the 8(a) BD Program Annual Review.

Description of Respondents: Applicants for and Participants in the 8(a) Business Development Program.

Form Numbers: 1010–Business; 1010–AIT; 1010–ANC; 1010–CDC; 1010–IND; 1010–NHO; and 1010C.

Annual Responses: 6045.

Annual Burden: 29,573.

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–20850 Filed 8–29–16; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 519 (Sub-No. 4)]

Notice of National Grain Car Council Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of National Grain Car Council meeting.

SUMMARY: Notice is hereby given of a meeting of the National Grain Car Council (NGCC), pursuant to the Federal Advisory Committee Act, 5 U.S.C., app. 2 10(a)(2).

DATES: The meeting will be held on Thursday, September 15, 2016, beginning at 1 p.m. (CDT), and is expected to conclude at 5 p.m. (CDT).

ADDRESSES: The meeting will be held at the Chase Park Plaza Hotel, 212 North Kingshighway Boulevard, Saint Louis, MO 63108. Phone (314) 858–8734.

FOR FURTHER INFORMATION CONTACT: Fred Forstall at (202) 245–0241 or *alfred.forstall@stb.dot.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: The NGCC was established by the Interstate Commerce Commission (ICC) as a working group to facilitate private-sector solutions and recommendations to the ICC (and now the Board) on matters affecting rail grain car availability and transportation. *Nat'l Grain Car Supply—Conference of Interested Parties,* EP 519 (ICC served Jan. 7, 1994).

The general purpose of this meeting is to discuss rail carrier preparedness to transport the 2016 grain harvest. Agenda items include the following: remarks by Board Chairman Daniel R. Elliott III, Board Vice Chairman and NGCC Co-Chairman Deb Miller, and Commissioner Ann D. Begeman; reports by member groups on expectations for the upcoming harvest, domestic and foreign markets, the supply of rail cars and rail service; and a presentation on disruptive agricultural technologies. The full agenda, along with other information regarding the NGCC, is posted on the Board's Web site at *http://www.stb.dot.gov/stb/rail/graincar_council.html.*

The meeting, which is open to the public, will be conducted pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management, 41 CFR pt. 102–3; the NGCC Charter; and Board procedures.

Public Comments: Members of the public may submit written comments to the NGCC at any time. Comments should be addressed to NGCC, c/o Fred Forstall, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001 or *alfred.forstall@stb.dot.gov.* Any further communications about this meeting will be announced through the STB Web site.

Decided: August 25, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–20848 Filed 8–29–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a teleconference of the Commercial Space Transportation

Advisory Committee (COMSTAC). The Teleconference will take place on Wednesday, September 14, 2016 starting at 3:00 p.m. Eastern Standard Time and will last approximately one hour. The agenda and call-in number will be posted at least one week in advance at *http://www.faa.gov/go/ast.*

The purpose of this teleconference is to review draft legislation proposed by Representative Jim Bridenstine, Oklahoma, 1st District, that would authorize the Department of Transportation to perform an enhanced version of its current payload review process and consult with its interagency partners to ensure the compliance of proposed commercial space activities with U.S. treaty obligations, and national security and foreign policy interests. Examples of the types of activities that could fall under this authority include commercial space stations, satellite servicing, space resource utilization, and operations beyond Earth orbit. The FAA recently used an ad-hoc version of this approach to authorize a U.S. company to carry out the first private mission on the Moon.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Michael Beavin, COMSTAC Executive Director, (the Contact Person listed below) in writing (mail or email) by September 9, 2016, so that the information can be made available to COMSTAC members for their review and consideration before the September 14 teleconference. Written statements should be supplied in the following formats: one hard copy with original signature and/or one electronic copy via email.

An agenda will be posted on the FAA Web site at *www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Persons listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Beavin, telephone (202) 267–9051; email *Michael.beavin@faa.gov,* FAA Office of Commercial Space Transportation (AST–3), 800 Independence Avenue SW., Room 331, Washington, DC 20591.

Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Authority: Public Law 92–463, 5 U.S.C. App. 2.

Issued in Washington, DC, August 24, 2016.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2016–20796 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–95]

Petition for Exemption; Summary of Petition Received; Fusion Flight, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 19, 2016.

ADDRESSES: You may send comments identified by Docket Number FAA–2016–5847 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuy H. Cooper, (202) 267–4715. 800 Independence Avenue SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 19, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking,

Petition for Exemption

Docket No.: FAA–2016–5847.

Petitioner: Fusion Flight, LLC.

Sections of 14 CFR Affected: 61.113, 91.151, 91.119, and 91.12.

Description of Relief Sought: Fusion Flight requests an exemption to operate an unmanned and autonomous aircraft that ascends, powered by a jet engine, on a ballistic trajectory up to 16.2 km (53,150 ft) AGL and descends, once its fuel is consumed, under parachute. The petitioner's purpose is to investigate the feasibility of constructing a launch vehicle with a jet-engine powered first stage, which if possible, has the potential to greatly reduce the cost of sending payloads into space.

[FR Doc. 2016–20812 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Waiver of Aeronautical Land-Use Assurance: Marshall Memorial Municipal Airport (MHL), Marshall, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent of Waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal from the City of Marshall (sponsor), Marshall, MO, to release a 15.42± acres of land from the federal obligation dedicating it to aeronautical

use and to authorize this parcel to be used for revenue-producing, non-aeronautical purposes.

DATES: Comments must be received on or before September 29, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Mayor Mark Gooden, City of Marshall Office Building, 214 N. Lafayette Ave., Marshall, MO 65340, (660) 886–2226.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust, Room 364, Kansas City, MO 64106, Telephone number (816) 329–2644, Fax number (816) 329–2611, email address: *lynn.martin@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to change approximately 15.42± acres of airport property at the Marshall Memorial Municipal Airport (MHL) from aeronautical use to non-aeronautical use for revenue producing. The parcel of land is located along the North line of Fairground Road. This parcel will be used for a solar farm. The land will be leased to MC Power for the solar farm.

No airport landside or airside facilities are presently located on this parcel, nor are airport developments contemplated in the future. Farming is the current use of the surface of the parcel. The parcel will serve as a revenue producing lot with the proposed change from aeronautical to non-aeronautical. The request submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the change to non-aeronautical status of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

The Marshall Memorial Municipal Airport (MHL) is proposing the release of one parcel, of 15.42 acres, more or less from aeronautical to non-aeronautical. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The rental of the subject property will result in the land at the Marshall Memorial Municipal Airport (MHL) being changed from aeronautical to nonaeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market rental value for the property. The annual income from rent payments will generate a long-term, revenue-producing stream that will further the Sponsor's obligation under FAA Grant Assurance number 24, to make the Marshall Memorial Municipal Airport as financially self-sufficient as possible.

Following is a legal description of the subject airport property at the Marshall Memorial Municipal Airport (MHL):

A tract of land located in the Southwest Quarter of Section 22 T50N R21W, in Marshall, Saline County, Missouri, and further described as follows:

Commencing at the Southwest Corner of said section 22, thence along the South line of said section, S. 89°09′20″ E. 383.83 feet; Thence N. 00°50′40″ E. 20.00 feet, to a point on the East Right of Way of U.S. Highway 65, and the point of beginning.

From the point of beginning, thence continuing along said Right of Way, on a curve to the right, having a radius of 2,774.79 feet, a distance of 732.57 feet, the chord being N. 17°16′20″ W. 730.45 feet; thence S. 83°49′30″ E. 1,163.93 feet; thence S. 01°54′00″ W. 586.19 feet; to the North line of Fairground Road; thence along said North line N. 89°09′20″ 920.98 feet, to the point of beginning, containing 15.42 acres.

Any person may inspect, by appointment, the request in person at the FAA office listed above **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Marshall Memorial Municipal Airport.

Issued in Kansas City, MO, on August 23, 2016.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2016–20793 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Baltimore/Washington International Thurgood Marshall Airport, Anne Arundel County, Maryland

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Maryland Aviation Administration for Baltimore/Washington International Thurgood Marshall Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Washington Airports District Office (WAS ADO), Marcus Brundage, Environmental Protection Specialist, Federal Aviation Administration, WAS ADO, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166, Telephone: (703) 661–1354.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Baltimore/Washington International Thurgood Marshall Airport are in compliance with applicable requirements of 14 CFR part 150, effective January 13, 2004. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations during a forecast period that is at least five (5) years in the future, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Mayland Aviation Administration. The documentation that constitutes the "Noise Exposure Maps" (NEM) as defined in Section 150.7 of part 150 includes: 2014 Base Year NEM Figure (20) and 2019 Future Year NEM Figure (21). The Noise Exposure Maps contain current and forecast information, including the depiction of the airport and its boundaries, the runway configurations, and land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Day Night Average Sound Level (DNL) 65, 70 and 75 noise contours. Estimates for the area within these contours for the 2014 Base Year are shown in Table 3–1 and Table 15; and in Chapter 5 of the NEM. Estimates of the future residential population within the 2019 Future Year noise contours are shown in Table 15 and in Chapter 5 of the NEM. Figure 24 displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Chapter 4 and Appendix F. The type and frequency of aircraft operations (including nighttime operations) are found in Appendix C. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on August 17, 2016.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans; or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Eastern Region, Airports Division, AEA–600, 1 Aviation Plaza, Jamaica, New York 11434.

Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

Maryland Aviation Administration, 991 Corporate Boulevard, Linthicum, MD 21090.

FOR FURTHER INFORMATION CONTACT: Washington Airports District Office (WAS ADO), Marcus Brundage, Environmental Protection Specialist, Federal Aviation Administration, WAS ADO, 23723 Air Freight Lane, Suite 210, Dulles, VA 17011, Telephone: (703) 661–1354.

Issued in Dulles, VA, on August 17, 2016.

Matthew J. Thys,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 2016–20795 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No: FHWA–2016–0018]

Assumption of Authorities

AGENCY: Federal Highway Administration (FHWA); Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: The Fixing America's Surface Transportation (FAST) Act builds on the authorities and requirements in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and the Moving Ahead for Progress in the 21st Century Act (MAP–21). The FAST Act also builds on efforts under FHWA's Every Day Counts to accelerate delivery of surface transportation projects by institutionalizing best practices and expediting complex infrastructure projects.

The Secretary, in cooperation with the States, must submit recommendations to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate recommendations on legislation to permit the assumption of additional authorities by States. The FAST Act specifically asks for recommendations in the areas of real estate acquisition and project design.

In order to implement section 1316 of the FAST Act, FHWA is soliciting feedback from States and other stakeholders on additional authorities to assume under title 23, including real estate acquisition and project design. The FHWA will collect suggestions during a 60-day period. At the end of that period, FHWA will assess suggestions prior to providing a Report to Congress.

DATES: Comments must be received by October 31, 2016.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Electronic Mail: Section1316FRN@Sharepointmail.dot.gov.*
- *Mail:* U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. 5p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

All comments must include the docket number DOT–FHWA–2016–0018 at the beginning of the submission.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Howell, Office of Information Technology Services, (202) 366–5707, *michael.howell@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, Ms. Janet Myers, Office of Chief Counsel, 202–366–2019, *janet.myers@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, or Ms. Cynthia Essenmacher, Office of Infrastructure (Detail), Federal Highway Administration, 315 W. Allegan St., Ste. 201, Lansing, MI 48913, (517) 702–1839, *cynthia.essenmacher@dot.gov,* Office Hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The FAST Act builds on the authorities and requirements in SAFETEA–LU and MAP–21, and on efforts under FHWA's Every Day Counts in an effort to accelerate delivery of surface transportation projects by institutionalizing best practices and expediting complex infrastructure projects. This includes promoting the transition from FHWA project-level "full-oversight" of the Federal-aid highway program (FAHP) to a risk-based approach to FHWA oversight activities. The FHWA's use of a risk-based approach to stewardship and oversight is intended to optimize the successful delivery of projects and to ensure compliance with Federal requirements by focusing FHWA resources on activities with the highest potential impacts on the success of the FAHP.

Section 1316(a) of the FAST Act directs the Secretary of Transportation to use the authority under 23 U.S.C. 106(c) to the maximum extent practicable to allow a State to assume the responsibilities described in 23 U.S.C. 106(c) on both a project-specific and programmatic basis. Section 1316 of the FAST Act seeks to expand the use of the 23 U.S.C. 106(c) authority for State assumption of responsibilities, and to solicit legislative recommendations for additional authorities for State assumption. Assumption is a key part of the transition to risk-based oversight of the FAHP. The Secretary, in cooperation with the States, must submit recommendations to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate recommendations on legislation to permit the assumption of additional authorities by States. The FAST Act specifically asks for recommendations in the areas of real estate acquisition and project design.

The FHWA may not assign its decisionmaking responsibilities to a State department of transportation (SDOT) unless authorized by law. Section 106(c) of title 23, United States Code (U.S.C.), authorizes the State to assume project responsibilities for design, plans, specifications, estimates, contract awards, and inspections. For projects that receive funding under title 23, U.S.C., and are on the National Highway System (NHS), including projects on the Interstate System, the State may assume the responsibilities unless FHWA, acting under a delegation of authority from the Secretary, determines that the assumption is not appropriate (23 U.S.C. 106(c)(1)). For non-NHS projects, States must assume such responsibilities (23 U.S.C. 106(c)(2)).

Section 106(c)(3) requires FHWA and the SDOT to enter into an agreement relating to the extent to which the SDOT assumes project and program responsibilities. This Stewardship and Oversight Agreement (S&O Agreement) includes information on which entity is responsible for specific project approvals and related responsibilities. The S&O Agreement also contains provisions relating to FHWA oversight of the FAHP, as part of the oversight program required by 23 U.S.C. 106(g).

In 2015 and 2016, all S&O Agreements with the SDOTs were updated and executed. The new S&O Agreements contain specific project and program level assumptions of responsibilities agreed upon between FHWA and the respective SDOTs (Attachment A). Examples of responsibilities assumed by some States include approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(i) and any successor regulation in 23 CFR part 710.

The agreements also include a broader list of title 23 program actions and agency points of contact (Attachment B). In addition, some States have assumed authorities under other statutory provisions, such as National Environmental Policy Act categorical exclusion approval actions assigned though a programmatic agreement pursuant to Section 1318(d) of MAP–21 and 23 CFR 771.117(g).

Commenters may wish to consider Attachments A & B, as well as other authorities that presently permit or prohibit State assumption, when developing their comments on additional authorities for SDOTs to assume. The S&O Agreements are available at the following Web site: *http://www.fhwa.dot.gov/federalaid/stewardship/.*

II. Objectives of This Notice

The FHWA is soliciting feedback from States and other stakeholders on additional authorities to permit States to assume responsibilities of the Secretary under title 23, U.S.C., including real estate acquisition and project design. The intent of this Notice is to seek feedback on ways in which FHWA could change existing regulations, policies, guidance, and/or administrative practices to better reflect the legislative purpose of section 1316, and to seek suggestions on legislative changes meeting the requirements of section 1316(b) of the FAST Act. Section 1316(b) requires the Secretary, in cooperation with the States, to submit recommendations for legislation to permit the assumption of additional authorities by States, including with respect to real estate acquisition and project design. This notice gives States and other stakeholders an opportunity to share comments and make recommendations to allow further State assumption of authorities for any project phase.

III. Request for Comments

In accordance with section 1316 of the FAST Act, FHWA seeks input from States and other stakeholders on what legislation, regulations, or policy they believe would accelerate project delivery. Recommendations may address any aspect of the FAHP, including, but not limited to, project design, real estate acquisition, plans, specifications, estimates, contract awards, and inspection of projects, on both a project-specific and programmatic basis.

The FHWA is soliciting feedback from States and other stakeholders on additional authorities States may wish to assume under title 23, including real estate acquisition and project design. The FHWA's goal is to understand which additional authorities of the Secretary States might wish to assume, and what revisions to existing legislation, regulations, policies, guidance and/or administrative practices are needed to permit such assumptions. Specifically, FHWA welcomes suggestions on:

(1) Additional authorities States could assume for project plans, specifications, estimates, contract awards, and inspection of projects,

(2) Additional authorities States could assume for the real estate acquisition and project design process, and

(3) Additional project or program level authorities, including new laws, regulations and policies, that would accelerate project delivery.

Commenters are encouraged to address any or all of the areas above. In responding, commenters may wish to address: Current assumptions contained in State S&O agreements, the additional responsibilities the commenter would like States to be able to assume, the commenter's specific goals for proposed assumption of additional authorities, changes to legislation, non-legislative actions FHWA might take to achieve those goals, the benefits and costs associated with the proposed assumption of authority, whether the proposal affects only FHWA or may have impacts on the responsibilities of other Federal agencies, the rationale and evidence to support the recommendation, and the roles of other stakeholders. Legislative recommendations and specific, actionable proposals for the revision of existing regulations, policies, guidance, and/or administrative practices are most useful. As a result, commenters are encouraged to focus on matters within the control of FHWA and Congress.

Issued on: August 22, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–20818 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0020]

Fixing America's Surface Transportation Act—Productive and Timely Expenditure of Funds

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: By this notice, FHWA announces a new Web site providing information and guidance on the use of programmatic approaches to project delivery in accordance with section 1421 of the Fixing America's Surface Transportation (FAST) Act ("Productive and Timely Expenditure of Funds"). The FHWA requests comments on what procedures, techniques, programmatic approaches, or best practices should be considered for inclusion on the Web site. In addition, FHWA is requesting comment on any information resources that are readily available regarding practices and procedures that avoid unnecessary delays, minimize cost overruns, and ensure the effective use of Federal funds.

DATES: Comments must be received on or before October 31, 2016. Late comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FHWA–2016–0020 by any one of the following methods:

Fax: 1–202–493–2251;

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number for this notice (FHWA–2016–0020). The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Yakowenko, FHWA Office of Program Administration, 202–366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Ms. Jennifer Mayo, FHWA Office of the Chief Counsel, 202–366–1523, or via email at *jennifer.mayo@dot.gov.* Office hours for the FHWA are from 8 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

On December 4, 2015, President Obama signed into law the FAST Act. The FAST Act authorizes $305 billion over fiscal years 2016 through 2020 for DOT's highway, highway and motor vehicle safety, public transportation, motor carrier safety, hazardous materials safety, rail, and research, technology and statistics programs.

Section 1421 of the FAST Act, "Productive and Timely Expenditure of Funds," states that the Secretary shall develop guidance that encourages the use of programmatic approaches to project delivery, expedited and prudent procurement techniques, and other best practices to facilitate productive, effective, and timely expenditure of funds for projects eligible for funding under title 23, United States Code. The Secretary is directed to work with States to ensure that any guidance developed under section 1421(a) is consistently implemented by States and the Federal Highway Administration to avoid unnecessary delays in completing projects; minimize cost overruns; and ensure the effective use of Federal funding.

For the purposes of section 1421, FHWA interprets the term "programmatic approach" to mean a method, procedure, tool, or technique that promotes increased efficiency by taking advantage of economy of scale (*e.g.,* a construction contract that provides for the replacement of bridges at multiple locations in lieu-of separate contracts for each bridge). The term "programmatic agreement" means an agreement that sets procedures for consultation, review, and compliance with Federal laws. Programmatic agreements allow repetitive actions to be handled on a program basis rather than on a project-by-project basis (*e.g.,* an agreement between a State department of transportation and an FHWA Division Office concerning the roles and responsibilities associated with review and approval of changes in Interstate-System Access). Programmatic approaches may include programmatic agreements.

The FHWA invites public comment on the following:

1. As it relates to section 1421, what procedures, techniques, programmatic approaches, or best practices should be considered for inclusion on the Web site?

2. What information resources are readily available that will provide documentation regarding procedures that avoid unnecessary delays, minimize cost overruns, and ensure the effective use of funds?

An example list of resources is available at the following Web site: *http://www.fhwa.dot.gov/construction/contracts/section1421.cfm.* The FHWA will consider posting information regarding the recommended procedures, techniques, programmatic approaches, and best practices collected through this public notice and comment process.

Issued on: August 22, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–20814 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0219]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 37 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before September 29, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0219 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 37 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Scott G. Barr

Mr. Barr, 47, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Barr understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Barr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

John L. Bauers

Mr. Bauers, 56, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bauers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bauers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Nebraska.

Robert J. Borgese

Mr. Borgese, 68, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Borgese understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Borgese meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Rodger L. Bratton

Mr. Bratton, 68, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bratton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bratton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Louisiana.

John T. Brecken

Mr. Brecken, 66, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brecken understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brecken meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Ross L. Christenson

Mr. Christenson, 72, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Christenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Christenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Daniel B. Cox

Mr. Cox, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cox understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Raymond Davila, Jr.

Mr. Davila, 42, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davila understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davila meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from New Jersey.

Craig W. Dennis

Mr. Dennis, 57, has had ITDM since 2000. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dennis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dennis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Minnesota.

Lawrence M. Duffy, III

Mr. Duffy, 68, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duffy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duffy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New York.

Douglas Endicott

Mr. Endicott, 71, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Endicott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Endicott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Carmine Ferraro

Mr. Ferraro, 57, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ferraro understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ferraro meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Thomas P. Fogerty

Mr. Fogerty, 58, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fogerty understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fogerty meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

M.A. Gandolfo, Jr.

Mr. Gandolfo, 43, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gandolfo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gandolfo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Merlyn C. Gerdes

Mr. Gerdes, 58, has had ITDM since 1987. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gerdes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gerdes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Fabian Guerrero-Rodriguez

Mr. Guerrero-Rodriguez, 29, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Guerrero-Rodriguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guerrero-Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nevada.

Loren T. Hall

Mr. Hall, 49, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Mark A. Hersh

Mr. Hersh, 50, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hersh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hersh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

James C. Holcomb

Mr. Holcomb, 43, has had ITDM since 1986. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holcomb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holcomb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Louisiana.

Eric E. Humphrey

Mr. Humphrey, 54, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Humphrey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Humphrey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Troy M. Keller

Mr. Keller, 46, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Ronald C. Kolb

Mr. Kolb, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kolb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kolb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Montana.

Robert J. Lockwood

Mr. Lockwood, 55, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lockwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lockwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Connecticut.

Kenneth R. Logan, Sr.

Mr. Logan, 61, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Logan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Logan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Illinois.

Adam W. Martin

Mr. Martin, 29, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Michael L. Mitchell

Mr. Mitchell, 43, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mitchell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mitchell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license Iowa.

Clarence H. Mitchell 3rd

Mr. Mitchell, 52, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mitchell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mitchell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Connecticut.

Lucas J. Preston

Mr. Preston, 23, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Preston understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Preston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

William B. L. Robinson

Mr. Robinson, 28, has had ITDM since 1989. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Robinson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Robinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arkansas.

Michael T. Salsedo

Mr. Salsedo, 60, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Salsedo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Salsedo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Hawaii.

F. Marino M. Sanchez

Mr. Sanchez, 53, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sanchez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sanchez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Andrew D. Sanford

Mr. Sanford, 51, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sanford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sanford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Tennessee.

Jeffery J. Stricherz

Mr. Stricherz, 57, has had ITDM since 1973. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stricherz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stricherz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Michael A. Taylor

Mr. Taylor, 60, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Taylor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Taylor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Jerry W. Thomas

Mr. Thomas, 65, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Ray E. Vaughan

Mr. Vaughan, 77, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vaughan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vaughan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Minnesota.

Ronald L. Yeager

Mr. Yeager, 73, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yeager understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yeager meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0219 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0219 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: August 19, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20777 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–EX–P

---

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2016–0036]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 68 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on May 26, 2016. The exemptions expire on May 26, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On April 25, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 68 individuals and requested comments from the public (81 FR 24161. The public comment period closed on May 25, 2016, and no comments were received.

FMCSA has evaluated the eligibility of the 68 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A

Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 68 applicants have had ITDM over a range of 1 to 40 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 25, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 68 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Thomas H. Adams, Jr. (PA)
Hobert P. Bates (TX)
Spencer L. Bates (VT)
Erik E. Baumgart (NE)
Robert T. Birch (PA)
Frank A. Borchers (NJ)
Paul J. Boucher (ME)
Nathan P. Broussard (KS)
Rodney J. Brown (VA)
Nicholas M. Catizone (MA)
Michael J. Christians (MN)
Joseph C. Cook (PA)
Stephen L. Davis (MO)
Henry L. Dickerson (AR)
Julius D. Duncan (FL)
William R. Faller (PA)
Stephen L. Fehr (IL)
Donald H. Feller (IN)
Stephen P. Glenning (FL)
Kevin B. Green (TN)
Dusty R. Grover (ID)
Robert W. Guccion (IA)
Richard A. Guzman (FL)
Andy H. Harnden (WA)
Russell D. Hartley (KS)
Dale L. Heisler, Jr. (PA)
Pablo R. Hernandez, II (MS)
James S. Hill (WA)
Eric D. Hulst (SD)
Stephen J. Hyde, Sr. (MA)
Steven G. Jackson (IN)
Michelle Jenkins (MA)
Robert C. Jones (VA)
Christopher P. Joyce (MD)
Paul M. Joyce (MA)
Steven W. Keech (PA)
Stephen W. Kerby (MD)
Elmer K. Kreier (WI)
Richard D. Kurtz (PA)
David O. Ludwig (ND)
Marvin D. Mitchell (WA)
Jack D. Moore (WV)
Matthew A. Neidermeier (FL)
Thomas M. Noon (MI)
Ronald A. Ortiz (CA)
Michael V. Palmer (NY)
LeRonne Peques (IL)
John D. Penrod (SD)
Michael A. Peppers (CA)
Noah I. Peterson (MN)
Thomas M. Peterson (NE)
Gregory S. Potter (MO)
Lisa M. Reynolds (CO)
Martina M. Sanchez (NY)
Brian A. Sexton (ME)
Daniel J. Sing (OH)
Mark W. Smith (PA)
Larry E. Sorrells (VA)
Eric J. Tavares (RI)
Michael R. Thomen (OH)
Michael F. Tibbetts (ME)
Charles E. Tillman, Jr. (FL)
Monte D. Trout (WA)
Aaron M. Trudeau (MT)
Thomas M. Waldron (MA)
David M. Wilfeard, II (NY)
Deborah C. Williams (NJ)
James R. Wolf (PA)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20781 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2016–0041]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 57 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on July 28, 2016. The exemptions expire on July 28, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 28, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 57 individuals and requested comments from the public (81 FR 42035. The public comment period closed on July 28, 2016 and 1 comment was received.

FMCSA has evaluated the eligibility of the 57 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 57 applicants have had ITDM over a range of 1 to 35 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 28, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received 1 comment in this proceeding. Deb Carlson stated that the state of Minnesota is in favor of granting exemptions to David J. Ahlers, Michael J. Beaver, Kirk A. Erickson, Kevin R. Holz, Duane A. Leazott, and David E. Roth, all of whom are drivers from Minnesota.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized

Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 57 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b)):

David J. Ahlers (MN)
George M. Antonopoulos (MA)
Louis G. Babich (NJ)
Scott R. Bailey (MA)
Michael J. Beaver (MN)
Jason C. Bradley (NY)
Joel P. Brown (PA)
Larry D. Brown (LA)
Garret L. Carter (MO)
Christopher D. Chapman (IA)
Robert J. Chapman (OH)
Steven A. Crain (LA)
Phillip Daquila III (IL)
Robert N. Drake (TX)
Kirk A. Erickson (MN)
Raymond E. Fisher, Jr. (PA)
Richard M. Frostig (CT)
Lawrence M. Gates (NY)
Alva E. Gladney (LA)
John J. Gonzalez (CT)
James M. Haight (NC)
Bradley T. Hall (AL)
William C. Higgins (NC)
David R. Hodge (MI)
James Holman (PA)
Kevin R. Holz (MN)
Jaemin Hwang (NY)
Willis A. Jergenson (IA)
Steven C. Jordan, Jr. (MD)
Craig S. Kozlowski (NY)
Alan D. Kozy (FL)
Duane A. Leazott (MN)
Mark D. Lema (CA)
Robert A. Lewis (PA)
David A. Luchansky (PA)
Jacob T. Marsee (OH)
Richard E. Mellors (NY)
Ronald L. Mills (VA)
Colton J. Nefzger (ND)
Dorian T. Papazikos (AL)
Kurt A. Payne (CA)
Carson A. Penny (CA)
Wayne F. Pohlmeier (NE)
Santos R. Rodriquez, Jr. (NE)
David E. Roth (MN)
Kenneth R. Schleppy (PA)
John J. Shedlock (PA)
Jonathan W. Simoneau (NH)
Kenneth R. Stephenson (TX)
Jeffrey S. Toler (IN)
Herbert L. Turner (FL)
Louis D. Valente (MA)
Robert L. Westergaard (NJ)
Mark A. Williams (IN)
Douglas J. Wood (KY)
Robert A. Yerges (WI)
Kyle S. Yount (KY)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20776 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2016–0040]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 70 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on July 22, 2016. The exemptions expire on July 22, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On June 22, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 70 individuals and requested comments from the public (81 FR 40746. The public comment period closed on July 22, 2016, and four comments were received.

FMCSA has evaluated the eligibility of the 70 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 70 applicants have had ITDM over a range of 1 to 35 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 22, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received 4 comments in this proceeding. Two anonymous commenters are in favor of granting the exemptions to all drivers listed in the notice. Deb Carlson stated that the state of Minnesota is in favor of granting the exemptions to Samuel B. Morris and Lloyd E. Schrunk, both of whom are drivers licensed in Minnesota. Ryan Root stated he is in favor of granting Zachary J.F. Kinsey an exemption. Mr. Root has been Mr. Kinsey's supervisor since 2013 and believes Mr. Kinsey properly manages his condition.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 70 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b)):

Michael J. Andries (WI)
Appiah T. Ankrah (M)
Gregory P. Austin (CA)
David F. Banko (CO)
John T. Bardin (NY)
Joseph Berta IV (OK)
John C. Birmingham (IA)
Brett C. Brayton (IA)
Robert G. Canelo (NM)
Christoph A. Chiappa
Johnny L. Cloy Sr. (TN)
Jon W. Collett (OH)
Joel A. Cote (ME)
Donald E. Cowell (CA)
Raymond J. Crosbie (NH)
Elmer W. Danley (PA)
Kenneth Dennis Jr. (KY)
Robert D. Diefenbaugh (NE)
Ronald A. Fancelli (OH)
Eduard Fontes (IA)
William J. Gangloff (NY)
Spencer J. Gruba (ND)
Phillip K. Guidice (WA)
Darin K. Hansen (IA)
James A. Hanson (OH)
William M. Haralson (TN)
Alejandro R. Hernandez (FL)
Stephen R. Hill (PA)
James A. Hutson (NY)
Jon W. Jernigan (OK)
Denise D. Johnston (IA)
Mark A. Johnston (PA)
Zachary J.F. Kinsey (CA)
Steven J. Korb (OH)
Jongsub Lee (PA)
Ramon Lopez (TX)
David C. Love (IL)
Cody J. Makuski (WI)
John T. McEntire III (SC)
Billy J. McNealy (MI)
Carlos Medellin (TX)
Harry E. Miller (PA)
Christopher K. Moore (AZ)
Samuel B. Morris (MN)
Bryan C. Mullins (TX)
Zachary Nechi (IL)
Toriano T. Neely (AL)
Orlando Padilla (TX)
Michael P. Pattie (RI)
Tony L. Pennywell (FL)
Brian K. Porter (KY)
Oscar L. Quezada (CA)
Kenneth G. Reesman (PA)
Walter D. Richardson (MA)
Karla Robles (FL)
Tracy A. Rowland (WA)
Michael J. Russell (MA)
Jeffrey M. Sandler (CA)
Paul A. Schaus (IL)
Lloyd E. Schrunk (MN)
Evan C. Sebastian (TX)
Nyanate F. Senyon (NJ)
Burton D. Shellabarger (IA)
John M. Suttles (OH)
John R. Tupper (ID)
Thomas W. Upton (NY)
James M. Walsh (WI)
Billy J. Webb, Jr. (MS)
Steven R. Williams (MO)
James A. Yates (IA)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20782 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–[2016–0039]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 65 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on June 8, 2016. The exemptions expire on June 8, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On May 9, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 65 individuals and requested comments from the public (81 FR 28121. The public comment period closed on June 8, 2016, and one comments was received.

FMCSA has evaluated the eligibility of the 65 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 65 applicants have had ITDM over a range of 1 to 35 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the May 9, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Samer M. Valle stated he will comply with all stipulations of the exemption when it is granted.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 65 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 49 CFR 391.64(b)):

Israel R.H. Alvarez (KS)
Matthew P. Ambrose (OH)
Christopher M. Anderson (AR)
Juan Arvizu (FL)
Steven E. Beining (OH)
Steven Belback (PA)
Joseph N. Beller (TX)
Roger D. Bragg (WV)
Jonathan Bu (NJ)
John Ciesmelewski (NJ)
Ernest W. Collett (TX)
Daniel C. Crider (MN)
Charla J. Donahy (TX)
Jason A. Edington (TN)
Richard D. Florio, Jr. (NY)
Tyler J. Francis (KS)
Calvin L. Frew (ID)
Juda Friedman (NY)
Dean Gage (NY)
William Gallagher (PA)
Michael A. Gervasio (NY)
Harvey E. Gordon (MA)
James W. Gorman, Jr. (MD)
Christopher L. Greene (WY)
Gregor C. Guisewhite (PA)
Aleaha M. Hallgren (IL)
Dennis T. Harding (MN)
Brandon R. Hart (TX)
Carl E. Hawkins (IL)
Craig J. Hebbeln (IA)
Stephen E. Hochmiller (CO)
Jack V. Holloway (IL)
Richard L. Hubbard (MN)
Sondra R. Jones (TX)
John F. Kelleher, Jr. (MA)
Stephen A. Kinney (MI)
Russell L. Koehn (IL)
Timothy C. LaRue (FL)
Joseph M. Lopes (NH)
Ronald G. Mundt (WI)
Derrick C. Nailon (MN)
William B. Onimus (PA)
Jesus O. Orellana (RI)
Victor M. Orta (TX)
Travis J. Partridge (IA)
Adam L. Pennings (MN)
Tyler D. Pittsley (ND)
William D. Powell (IL)
Lee A. Pulda (WI)
Dustin L. Renfroe (TX)
Robert D. Risk (IN)
David C. Roberts (SD)
Richard L. Robinson (MI)
Randy Rowe (IL)
William K. Sawyer II (NM)
Jeffrey J. Schnacker (NE)
Jeffrey D. Smith (MD)
Anthony G. Stellatos (NJ)
Trent A. Stuber (IL)
Samer M. Valle (TX)
LaDon L. Wallin (MN)
Thomas J. Warren (MN)
Richard D. Webb (NY)
Grady L. Wilson, Jr. (FL)
Karl S. Yauneridge (MD)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20783 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0069]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), this provides the public notice that by a document dated June 13, 2016, Delaware Coast Line Railroad (DCLR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 223.11, *Safety Glazing Standards—Requirements for existing locomotives*. FRA assigned the petition Docket Number FRA–2016–0069.

DCLR petitioned FRA to grant a waiver of compliance from 49 CFR 223.11 for locomotives identified as DCLR182 (1962 ALCO RS18), DCLR4024 (1978 GE B23–7), DCLR 4054 (1978 GE B23–7), and DCLR R007 (1957 GE 60 Ton). These four locomotives would operate at a maximum speed of 10 mph, providing freight service only. The waiver is being sought due to the high cost to replace the existing glass.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 14, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communication and comment regarding any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC, on August 25, 2016.

John Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–20845 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0075]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated June 14, 2016, CSX Transportation (CSX) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0075.

Applicant: CSX Transportation, Mr. Jody Cox, Chief Engineer, Communications & Signals, 500 Water Street, Speed Code J–350, Jacksonville, FL 32202.

CSX seeks approval of the discontinuance of the signal system, control point (CP) Rule–511, and traffic control (TC) Rule–510 on the Plymouth Subdivision, Chicago Division, Plymouth, MI.

CSX proposes to discontinue CP–511 and TC–510 Rules currently in effect on portions of track between CP Beck Road, Milepost (MP) CH27.0, and CP Seymour, MP CH148.17, and operate under track warrant control D 505 Rules. Signals will be removed and all power-operated switches will be converted to hand operation. The CP–511 Rule will remain in effect at CP Ann Pere, MP CH52.8. CP–511 and TC–510 Rules will remain in effect between CP EE Throwbridge, MP CH83.12, and CP Ensel, MP CH89.95, which will ensure that there is no operational impact to the Jackson & Lansing Railroad.

The reason given for the proposed discontinuance is that the signal system, CP–511, and TC–510 Rules are no longer needed for present-day operation.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U. S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 14, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on August 25, 2016.

John Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–20844 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0072]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated July 20, 2016, Nevada Northern Railway (NNR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at Title 49 Code of Federal Regulations Part 230–Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2016–0072. NNR is a museum that operates a railroad and locomotive shop registered as National Historic Landmarks. NNR maintains and operates Number 93, a 2–8–0 "Consolidation" type of steam locomotive built by the American Locomotive Works in 1909.

NNR requests relief from performing the 1,472 service day inspection (SDI), for Number 93, as it pertains to the inspection of the boiler every 15 calendar years or 1,472 service days. This is required under 49 CFR 230.17–*Railroad Operating Rules–One thousand four hundred seventy-two (1,472) service day inspection.* NNR is requesting an additional 365 calendar days and not more than 100 service days before performing a 1,472 SDI. The previous SDI was performed on October 20, 2001, and granting this relief will allow Number 93 an SDI period of 16 calendar years while not exceeding 1,472 service days.

NRR currently has two operating steam locomotives: Number 93 and Number 40, a 4–6–0 "Ten Wheeler" type of steam locomotive built by the Baldwin Locomotive Works in 1910. NRR is rebuilding No. 81, a 2–8–0 "Consolidation" type of steam locomotive built by the Baldwin Locomotive Works in 1917. NNR's justification for requesting relief is to ensure that two operating locomotives will be available at all times to provide motive power for the tourist operation. Number 93 will be removed from service for the 1,472 SDI when Number 81 enters service by October 20, 2017.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 14, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on August 25, 2016.

John Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–20846 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

[Docket No. DOT–MARAD–2016 0089]

Request for Comments of a Previously Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on June 2, 2016 (35439 **Federal Register**, Vol. 81, No. 106).

DATES: Comments must be submitted on or before September 29, 2016.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, 202–366–0688, Director, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Tanker Agreement.

OMB Control Number: 2133–0505.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: This collection of information is used to gather information on tanker operators who agree to contribute, either by direct charter to the Department of Defense or to other participants tanker capacity as requested by the Maritime Administrator at such times and such amounts as determined to be necessary to meet the essential needs of DOD for the transportation of petroleum and petroleum products in bulk by sea. The Voluntary Tanker Agreement is a voluntary emergency preparedness agreement in accordance with Section 708, Defense Production Act, 195, as amended (50 U.S.C. App. 2158).

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form(s): MA–1060.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Annual Estimated Total Annual Burden Hours: 15.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

By Order of the Maritime Administrator,

Dated: August 23, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–20866 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0088]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AFTER HOURS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before September 29, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0088. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime

Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AFTER HOURS is:

Intended Commercial Use of Vessel: "Harbor sunset cruises."

Geographic Region: "Florida."

The complete application is given in DOT docket MARAD–2016–0088 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: August 23, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–20865 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD 2016 0090]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Information To Determine Seamen's Reemployment Rights—National Emergency

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This information will be used to determine if U.S. civilian mariners are eligible for re-employment rights under the Maritime Security Act of 1996. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by October 31, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2016–0090] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, Maritime Administration, Office of Labor and Workforce Development, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–0029; or email: *rod.mcfadden@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133–0526.

Title: Information to Determine Seamen's Reemployment Rights—National Emergency.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: This collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Respondents: U.S. Merchant Seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Number of Respondents: 10.

Number of Responses: 10.

Total Annual Burden: 10.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

By Order of the Maritime Administrator.

Dated: August 23, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–20874 Filed 8–29–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (July to July 2016). The mode of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on August 19, 2016.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
16035–M	LCF Systems, Inc., Scottsdale, AZ.	49 CFR 173.301a, 173.302a, and 173.304a.	To reissue the special permit that was originally issued on an emergency basis with a two year renewal.
DENIED			
16412–M	Request by Nantong CIMC Tank Equipment Co. Ltd., Jiangsu Province, July 14, 2016. To modify the special permit to authorize an additional hazardous material.		
16391–M	Request by Halliburton Energy Services, Inc., Carrollton, TX, July 14, 2016. To modify the special permit to increase the restriction of the service pressure to 16.000 psi.		

[FR Doc. 2016–20590 Filed 8–29–16; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 25, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 29, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Community Development Financial Institutions Fund

OMB Control Number: 1559–0014.

Type of Review: Extension of a currently approved collection.

Title: New Markets Tax Credit (NMTC) Program—Community Development Entity (CDE) Certification Application.

Abstract: The purpose of the NMTC Program is to provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in new private capital in low income communities. Applicants must be a CDE to apply for allocation; this information collection includes the application.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,125.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–20857 Filed 8–29–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Bricklayers & Allied Craftworkers Local 5 New York Retirement Fund Pension Plan (Bricklayers Local 5 Pension Plan), a multiemployer pension plan, has submitted an application to the Department of the Treasury (Treasury) to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the Bricklayers Local 5 Pension Plan has been published on the Treasury Web site and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Bricklayers Local 5 Pension Plan.

DATES: Comments must be received by October 14, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Board of Trustees of the Bricklayers Local 5 Pension Plan, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On August 4, 2016, the Board of Trustees of the Bricklayers Local 5 Pension Plan submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on

Treasury's Web site at *https://auth.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Bricklayers Local 5 Pension Plan application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the Bricklayers Local 5 Pension Plan. Consideration will be given to any comments that are timely received by Treasury.

Dated: August 23, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–20790 Filed 8–29–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Iron Workers Local 17 Pension Fund, a multiemployer pension plan, has submitted a revised application to the Department of the Treasury (Treasury) to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). This revised application was submitted on July 29, 2016, by the Board of Trustees of the Iron Workers Local 17 Pension Fund following the withdrawal of the application that it submitted on December 23, 2015. The purpose of this notice is to announce that the revised application has been published on the Treasury Web site and to request public comments on the application from interested parties, including participants, beneficiaries, employee organizations, and contributing employers of the Iron Workers Local 17 Pension Fund.

DATES: Comments must be received by October 14, 2016.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the Board of Trustees of the Iron Workers Local 17 Pension Fund, please contact Treasury at (202) 622–1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On July 29, 2016, the Board of Trustees of the Iron Workers Local 17 Pension Fund submitted a revised application for approval to reduce benefits under the plan following the withdrawal of the application that it submitted on December 23, 2015. As required by MPRA, the revised application has been published on Treasury's Web site at *https://auth.treasury.gov/services/Pages/Plan-Applications.aspx.* Treasury is publishing this notice in the **Federal Register**, in consultation with PBGC and the Department of Labor, to solicit public comments on all aspects of the Iron Workers Local 17 Pension Fund application.

Comments are requested from interested parties, including participants, beneficiaries, employee organizations, and contributing employers of the Iron Workers Local 17 Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: August 23, 2016.

David R. Pearl,

Executive Secretary, Department of the Treasury.

[FR Doc. 2016–20789 Filed 8–26–16; 8:45 am]

BILLING CODE 4810–25–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 168 August 30, 2016

Part II

Department of Energy

10 CFR Parts 429, 430, and 431
Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Consumer and Commercial Water Heaters; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430, and 431

[Docket No. EERE–2015–BT–TP–0007]

RIN 1904–AC91

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Consumer and Commercial Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish a mathematical conversion factor to translate the current energy conservation standards and the measured values determined under the energy factor, thermal efficiency, and standby loss test procedures for consumer water heaters and certain commercial water heaters to those determined under the more recently adopted uniform energy factor test procedure. As required by the Energy Policy and Conservation Act of 1975 (EPCA), as amended, DOE initially presented proposals for establishing a mathematical conversion factor in a notice of proposed rulemaking (NOPR) published on April 14, 2015 (April 2015 NOPR). Upon further analysis and review of the public comments received in response to the April 2015 NOPR, DOE is publishing this supplemental notice of proposed rulemaking (SNOPR), which: updates the proposed mathematical conversion factors based on new test data received after the publication of the April 2015 NOPR; proposes updates to the methodology for developing the conversions for certain covered water heaters based on feedback received from interested parties; and proposes a new approach for denominating the existing energy conservation standards in terms of the new uniform energy factor (UEF) metric.

DATES: *Comments:* DOE will accept comments, data, and information regarding this SNOPR submitted no later than September 29, 2016. See section V, "Public Participation," for details.

ADDRESSES: All comments submitted must identify the SNOPR for Test Procedures for the Conversion Factor for Consumer and Certain Commercial Water Heaters, and provide docket number EERE–2015–BT–TP–0007 and/or regulatory information number (RIN) 1904–AC91. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: ConsumerCommWaterHtrs2015TP0007@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
3. *Postal Mail:* Ms. Ashley Armstrong, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Ashley Armstrong, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Room 6094, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www.regulations.gov/docket?D=EERE–2015–BT–TP–0007.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, "Public Participation," for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
II. Summary of the Supplemental Notice of Proposed Rulemaking
III. Discussion
  A. Purpose
  B. Scope
  C. Approaches for Developing Conversions
  1. Overview of Analytical Methods Approach
  2. Overview of Empirical Regression Approach
  3. Overview of Hybrid Approach
  4. Analytical Methods Approach
  a. Maximum GPM
  b. First-Hour Rating
  c. Uniform Energy Factor
  i. Consumer Storage Water Heaters
  ii. Consumer Instantaneous Water Heater
  iii. Residential-Duty Commercial Storage Water Heaters
  iv. Residential-Duty Commercial Electric Instantaneous Water Heaters
  5. Empirical Regression Approach
  D. Testing Conducted for the Mathematical Conversion
  1. Repeatability
  E. Testing Results and Analysis of Test Data
  1. Impact of Certain Water Heater Attributes on Efficiency Ratings
  2. Conversion Factor Derivation
  a. Consumer Storage Water Heaters
  i. Test Results
  ii. Conversion Factor Results
  b. Consumer Instantaneous Water Heaters
  i. Test Results
  ii. Conversion Factor Results
  c. Residential-Duty Commercial Storage Water Heaters
  i. Test Results
  ii. Conversion Factor Results
  d. Residential-Duty Commercial Instantaneous Water Heaters
  e. Grid-Enabled Storage Water Heaters
  3. Energy Conservation Standard Derivation
  a. Storage Volume Used for Calculations
  F. Compliance and Grandfathering
  G. Certification
IV. Procedural Issues and Regulatory Review
  A. Review Under Executive Order 12866
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act of 1995
  D. Review Under the National Environmental Policy Act of 1969
  E. Review Under Executive Order 13132
  F. Review Under Executive Order 12988
  G. Review Under the Unfunded Mandates Reform Act of 1995
  H. Review Under the Treasury and General Government Appropriations Act, 1999

I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
V. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

Title III Part B[1] of the Energy Policy and Conservation Act of 1975 ("EPCA" or, "the Act"), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include consumer water heaters, one subject of this document. (42 U.S.C. 6292(a)(4)) Title III, Part C[3] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, Sec. 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which includes the commercial water heating equipment that is another subject of this rulemaking. (42 U.S.C. 6311(1)(K))

Under EPCA, DOE's energy conservation program generally consists of four parts: (1) Testing; (2) labeling; (3) energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products and equipment must use as the basis for certifying to DOE that their products and equipment comply with the applicable energy conservation standards adopted under EPCA, and for making other representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s); 42 U.S.C. 6314) Similarly, DOE must use these test procedures to determine whether such products and certain equipment comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6314)

EPCA contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1); 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4); 6313(a)(6)(B)(iii)(II))

EPCA prescribed the energy conservation standards for consumer water heaters, shown in Table I.1 (42 U.S.C. 6295(e)(1)), and directed DOE to conduct further rulemakings to determine whether to amend these standards (42 U.S.C. 6295(e)(4)(A)–(B)) DOE notes that under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for a covered product.

TABLE I.1—EPCA INITIAL ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Energy factor
Gas Water Heater	0.62 − (0.0019 × Rated Storage Volume in gallons).
Oil Water Heater	0.59 − (0.0019 × Rated Storage Volume in gallons).
Electric Water Heater	0.95 − (0.00132 × Rated Storage Volume in gallons).

On October 17, 1990, DOE published a final rule which updated the test procedure from a no-draw test to a six-draw, 24-hour simulated-use test. 55 FR 42162. The effect of this change in test procedure was investigated on a sample of representative units and based on the results of testing on those units, DOE updated the energy conservation standard for electric water heaters to reflect the new test procedure. To account for the change in test procedure for electric water heaters, DOE amended the standard to 0.93 − (0.00132 × Rated Storage Volume). *Id.* at 42177. DOE notes that these statutory energy conservation standards apply to both storage and instantaneous consumer water heaters regardless of volume capacity.

On April 16, 2010, DOE published a final rule (hereinafter referred to as the "April 2010 final rule") that amended the energy conservation standards for specified classes of consumer water heaters, and maintained the existing energy conservation standards for tabletop and electric instantaneous water heaters. 75 FR 20112. The standards adopted by the April 2010 final rule are shown below in Table I.2. These standards apply to all water heater product classes listed in Table I.2 and manufactured in, or imported into, the United States on or after April 16, 2015, for all classes except for tabletop and electric instantaneous. For these latter two classes, compliance with these standards has been required since April 15, 1991. 55 FR 42162 (Oct. 17, 1990). Current energy conservation standards for consumer water heaters can be found in DOE's regulations at 10 CFR 430.32(d).

TABLE I.2—DOE ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS

Product class	Rated storage volume ***	Energy factor **
Gas-fired Storage	≥20 gal and ≤55 gal	0.675 − (0.0015 × V_s).
	>55 gal and ≤100 gal	0.8012 − (0.00078 × V_s).
Oil-fired Storage	≤50 gal	0.68 − (0.0019 × V_s).
Electric Storage	≥20 gal and ≤55 gal	0.96 − (0.0003 × V_s).

---

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

TABLE I.2—DOE ENERGY CONSERVATION STANDARDS FOR CONSUMER WATER HEATERS—Continued

Product class	Rated storage volume ***	Energy factor **
	>55 gal and ≤120 gal	$2.057 - (0.00113 \times V_s)$.
Tabletop*	≥20 gal and ≤120 gal	$0.93 - (0.00132 \times V_s)$.
Gas-fired Instantaneous	<2 gal	$0.82 - (0.0019 \times V_s)$.
Electric Instantaneous *	<2 gal	$0.93 - (0.00132 \times V_s)$.

* Tabletop and electric instantaneous water heater standards were not updated by the April 2010 final rule.

** V_s is the "Rated Storage Volume" which equals the water storage capacity of a water heater (in gallons), as specified by the manufacturer.

*** Rated Storage Volume limitations result from either a lack of test procedure coverage or from divisions created by DOE when adopting standards. The division at 55 gallons for gas-fired and electric storage water heaters was established in the April 16, 2010 final rule amending energy conservation standards. 75 FR 20112. The other storage volume limitations shown in this table are a result of test procedure applicability and are discussed in the July 2014 final rule. 79 FR 40542 (July 11, 2014).

Water heaters that use gas, oil, electricity, or a combination of these fuels, that are not within the rated storage volume sizes stated in Table I.2 (*e.g.*, gas-fired storage less than 20 gallons or greater than 100 gallons), are subject to the applicable energy conservation standard established in EPCA.

The initial Federal energy conservation standards and test procedures for commercial water heating equipment were added to EPCA as an amendment made by the Energy Policy Act of 1992 (EPACT). (42 U.S.C. 6313(a)(5)) These initial energy conservation standards corresponded to the efficiency levels contained in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 (ASHRAE Standard 90.1) in effect on October 24, 1992. The statute provided that if the efficiency levels in ASHRAE Standard 90.1 were amended after October 24, 1992, the Secretary must establish an amended uniform national standard at new minimum levels for each equipment type specified in ASHRAE Standard 90.1, unless DOE determines, through a rulemaking supported by clear and convincing evidence, that national standards more stringent than the new minimum levels would result in significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)) The statute was subsequently amended to require DOE to review its standards for commercial water heaters (and other "ASHRAE equipment") every six years. (42 U.S.C. 6313(a)(6)(C)) On January 12, 2001, DOE published a final rule for commercial water heating equipment that amended energy conservation standards by adopting the levels in ASHRAE Standard 90.1–1999 for all types of commercial water heating equipment, except for electric storage water heaters. 66 FR 3336. For electric storage water heaters, the standard in ASHRAE Standard 90.1–1999 was less stringent than the standard prescribed in EPCA and, consequently, would have increased energy consumption, so DOE maintained the standards for electric storage water heaters at the statutorily prescribed level. DOE published the most recent final rule for commercial water heating equipment on July 17, 2015, in which DOE adopted the thermal efficiency level for oil-fired storage water heaters that was included in ASHRAE 90.1–2013. 80 FR 42614. The current standards for commercial water heating equipment are presented in Table I.3.

TABLE I.3—ENERGY CONSERVATION STANDARDS FOR COMMERCIAL WATER HEATING EQUIPMENT

Equipment category	Size	Energy conservation standards*	
		Minimum thermal efficiency (equipment manufactured on and after October 9, 2015) ** † (%)	Maximum standby loss (equipment manufactured on and after October 29, 2003) ** ††
Electric storage water heaters	All	N/A	$0.30 + 27/V_m$(%/h).
Gas-fired storage water heaters	≤155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
	>155,000 Btu/h	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Oil-fired storage water heaters	≤155,000 Btu/h	80†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
	>155,000 Btu/h	80†	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Electric instantaneous water heaters†††	<10 gal	80	N/A.
	≥10 gal	77	$2.30 + 67/V_m$ (%/h).
Gas-fired instantaneous water heaters and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	80	$Q/800 + 110(V_r)^{1/2}$ (Btu/h).
Oil-fired instantaneous water heater and hot water supply boilers.	<10 gal	80	N/A.
	≥10 gal	78	$Q/800 + 110(V_r)^{1/2}$ (Btu/h)

Equipment Category	Size	Minimum thermal insulation
Unfired hot water storage tank	All	R–12.5.

* V_m is the measured storage volume, and V_r is the rated volume, both in gallons. Q is the nameplate input rate in Btu/h.

** For hot water supply boilers with a capacity of less than 10 gallons: (1) The standards are mandatory for units manufactured on and after October 21, 2005 and (2) units manufactured on or after October 23, 2003, but prior to October 21, 2005, must meet either the standards listed in this table or the applicable standards in Subpart E of this Part for a "commercial packaged boiler."

† For oil-fired storage water heaters: (1) The standards are mandatory for equipment manufactured on and after October 9, 2015, and (2) equipment manufactured prior to that date must meet a minimum thermal efficiency level of 78 percent.

†† Water heaters and hot water supply boilers having more than 140 gallons of storage capacity need not meet the standby loss requirement if: (1) The tank surface area is thermally insulated to R–12.5 or more, (2) a standing pilot light is not used, and (3) for gas-fired or oil-fired storage water heaters, they have a fire damper or fan-assisted combustion.

††† Energy conservation standards for electric instantaneous water heaters are included in EPCA. (42 U.S.C. 6313(a)(5)(D)–(E)) The compliance date for these energy conservation standards is January 1, 1994. In a NOPR for energy conservation standards for commercial water heating equipment published on May 31, 2016, DOE proposed to codify these standards for electric instantaneous water heaters in its regulations at 10 CFR 431.110. 81 FR 34440.

On December 18, 2012, the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210, was signed into law. In relevant part, it amended EPCA to require that DOE publish a final rule establishing a uniform efficiency descriptor and accompanying test methods for consumer water heaters and certain commercial water heating equipment[4] within one year of the enactment of AEMTCA. (42 U.S.C. 6295(e)(5)(B)) The final rule must replace the energy factor (EF), thermal efficiency (TE), and standby loss (SL) metrics with a uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(C)) On July 11, 2014, DOE published a final rule that fulfilled these requirements. 79 FR 40542 (July 2014 final rule). AEMTCA requires that, beginning one year after the date of publication of DOE's final rule establishing the uniform descriptor (*i.e.,* July 13, 2015), the efficiency standards for the consumer water heaters and residential-duty commercial water heaters identified in the July 2014 final rule must be denominated according to the uniform efficiency descriptor established in that final rule (42 U.S.C. 6295(e)(5)(D)), and that DOE must develop a mathematical conversion for converting the measurement of efficiency from the test procedures and metrics in effect at that time to the uniform efficiency descriptor. (42 U.S.C. 6295(e)(5)(E)(i)–(ii))

EPCA provides that any covered water heater (*i.e.,* under DOE's rulemaking, all consumer water heaters and residential-duty commercial water heaters) manufactured prior to the effective date of the UEF test procedure final rule (*i.e.,* July 13, 2015) that complied with the efficiency standards and labeling requirements applicable at the time of manufacture will be considered to comply with the UEF test procedure final rule and with any revised labeling requirements established by the Federal Trade Commission (FTC) to carry out the UEF test procedure final rule. (42 U.S.C. 6295(e)(5)(K)) DOE's interpretation and application of this provision are discussed in detail in Section III.F.

As noted previously, in the July 2014 final rule, DOE amended its test procedure for consumer and certain commercial water heaters. 79 FR 40542. The July 2014 final rule for consumer and certain commercial water heaters satisfied the AEMTCA requirements to develop a uniform efficiency descriptor to replace the EF, TE, and SL metrics. The amended test procedure includes provisions for determining the uniform energy factor (UEF), as well as the annual energy consumption of these products. Furthermore, the uniform descriptor test procedure can be applied to: (1) Consumer water heaters (including certain consumer water heaters that are covered products under EPCA's definition of "water heater" at 42 U.S.C. 6291(27), but that were not addressed by the previous test method); and (2) commercial water heaters that have residential applications. The major modifications to the EF test procedure to establish the uniform descriptor test method included the use of multiple draw patterns and different draw patterns, and changes to the set-point temperature. In addition, DOE expanded the scope of the test method to include all storage volumes, specifically by including test procedure provisions that are applicable to water heaters with storage volumes between 2 gallons (7.6 L) and 20 gallons (76 L), and to clarify applicability to electric instantaneous water heaters. DOE also established a new definition for "residential-duty commercial water heater" and re-categorized certain commercial water heaters into this class.

This rulemaking is intended to satisfy the requirements of AEMTCA to develop a mathematical conversion factor for converting the EF, TE, and SL metrics to the UEF metric. (42 U.S.C. 6295(e)(5)(E)) As an initial step in conducting this rulemaking, DOE published a notice of proposed rulemaking on April 14, 2015, which included proposed mathematical conversion factors and proposed updates to the energy conservation standards. 80 FR 20116.

The Energy Efficiency Improvement Act of 2015 (EEIA 2015) (Pub. L. 114–11) was enacted on April 30, 2015. Among other things, EEIA 2015 added a definition of "grid-enabled water heater" to EPCA's energy conservation standards for consumer water heaters. (42 U.S.C. 6295(e)(6)(A)(ii)) These products are intended for use as part of an electric thermal storage or demand response program. One of the criteria in EPCA that defines a "grid-enabled water heater" is the requirement that it meet a certain energy factor (specified by a formula set forth in the statute), or an equivalent alternative standard that DOE may prescribe. *Id.* On August 11, 2015, DOE published a final rule in the **Federal Register** to implement the changes to EPCA by placing the energy conservation standards and related definitions in the Code of Federal Regulations (CFR). 80 FR 48004. As the energy conservation standard for grid-enabled water heaters is in terms of energy factor, DOE is addressing these products in this notice to propose a mathematical conversion and updated energy conservation standard in terms of UEF.

II. Summary of the Supplemental Notice of Proposed Rulemaking

In this SNOPR, DOE proposes to establish a mathematical conversion factor between the values determined using the EF, TE, and SL test procedures (including the first-hour rating or maximum gallons per minute (GPM) rating, as applicable), and the values that would be determined using the uniform efficiency descriptor test procedure established in the July 2014 final rule (*i.e.,* UEF and first-hour rating or maximum GPM rating). After further analysis and review of the public comments received in response to the April 2015 NOPR, DOE is publishing this SNOPR to: (1) Update the proposed mathematical conversion factors based on new test data received after the publication of the April 2015 NOPR; (2) propose to update the approaches considered for developing the conversion factors for standard and low NO_X non-condensing gas fired storage water heaters, condensing storage water heaters, tabletop water heaters, heat pump water heaters and residential-duty water heaters; and (3) propose a new approach for denominating the existing energy conservation standards in terms of the new uniform energy factor metric.

Other than the specific amendments newly proposed in this SNOPR, DOE continues to propose the amendments originally included in the April 2015 NOPR. 80 FR 20116 (April 14, 2015). For the reader's convenience, DOE has reproduced in this SNOPR the entire body of latest proposed regulatory text from the April 2015 NOPR, amended as appropriate according to these proposals. DOE's supporting analysis and discussion for the portions of the proposed regulatory text not affected by this SNOPR may be found in the April 2015 NOPR.

---

[4] The uniform efficiency descriptor and accompanying test procedure apply to commercial water heating equipment with residential applications defined in the test procedure final rule published July 11, 2014, as a "residential-duty commercial water heater." See 79 FR 40542, 40586.

The mathematical conversion factor required by AEMTCA is a bridge between the values [5] obtained through testing under the EF, TE, and SL test procedures and those obtained under the uniform efficiency descriptor test procedure published in the July 2014 final rule. DOE conducted a series of tests on the classes of water heaters included within the scope of this rulemaking (see section III.B for details on the scope) and relied upon that test data and test data submitted by interested parties to develop the proposals in this SNOPR. DOE used the test data, along with the approaches described in section III.C, to calculate the conversion factors proposed in this SNOPR. To develop conversion factors for this SNOPR, DOE generally used the same methodology as proposed in the April 2015 NOPR (with several exceptions discussed in more detail in section III.E.2), and presents in this document the updated conversion factors based on the inclusion of additional test data. Subsequently, DOE used the conversion factors to derive minimum energy conservation standards in terms of UEF, as shown in Table II.1 and Table II.2. For this SNOPR, DOE adopted a new approach to denominating the energy conservation standards in terms of the UEF metric, which is explained in detail in section III.E.3. The proposed standards denominated in UEF are neither more nor less stringent than the EF-denominated standards for consumer water heaters (as amended by the April 2010 final rule) and for commercial water-heating equipment based on the thermal efficiency and standby loss metrics.

TABLE II.1—PROPOSED CONSUMER WATER HEATER ENERGY CONSERVATION STANDARDS

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2471 - (0.0002 \times V_r)$.
		Low	$0.5132 - (0.0012 \times V_r)$.
		Medium	$0.5827 - (0.0015 \times V_r)$.
		High	$0.6507 - (0.0019 \times V_r)$.
	≥20 gal and ≤55 gal	Very Small	$0.3456 - (0.0020 \times V_r)$.
		Low	$0.5982 - (0.0019 \times V_r)$.
		Medium	$0.6483 - (0.0017 \times V_r)$.
		High	$0.6920 - (0.0013 \times V_r)$.
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_r)$.
		Low	$0.7689 - (0.0005 \times V_r)$.
		Medium	$0.7897 - (0.0004 \times V_r)$.
		High	$0.8072 - (0.0003 \times V_r)$.
	>100 gal	Very Small	$0.1755 - (0.0006 \times V_r)$.
		Low	$0.4671 - (0.0015 \times V_r)$.
		Medium	$0.5719 - (0.0018 \times V_r)$.
		High	$0.6916 - (0.0022 \times V_r)$.
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.1822 - (-0.0001 \times V_r)$.
		Low	$0.5313 - (0.0014 \times V_r)$.
		Medium	$0.6316 - (0.0020 \times V_r)$.
		High	$0.7334 - (0.0028 \times V_r)$.
	>50 gal	Very Small	$0.1068 - (0.0007 \times V_r)$.
		Low	$0.4190 - (0.0017 \times V_r)$.
		Medium	$0.5255 - (0.0021 \times V_r)$.
		High	$0.6438 - (0.0025 \times V_r)$.
Electric Storage Water Heaters	<20 gal	Very Small	$0.7836 - (0.0013 \times V_r)$.
		Low	$0.8939 - (0.0008 \times V_r)$.
		Medium	$0.9112 - (0.0007 \times V_r)$.
		High	$0.9255 - (0.0006 \times V_r)$.
	≥20 gal and ≤55 gal	Very Small	$0.8808 - (0.0008 \times V_r)$.
		Low	$0.9254 - (0.0003 \times V_r)$.
		Medium	$0.9307 - (0.0002 \times V_r)$.
		High	$0.9349 - (0.0001 \times V_r)$.
	>55 gal and ≤120 gal	Very Small	$1.9236 - (0.0011 \times V_r)$.
		Low	$2.0440 - (0.0011 \times V_r)$.
		Medium	$2.1171 - (0.0011 \times V_r)$.
		High	$2.2418 - (0.0011 \times V_r)$.
	>120 gal	Very Small	$0.6802 - (0.0003 \times V_r)$.
		Low	$0.8620 - (0.0006 \times V_r)$.
		Medium	$0.9042 - (0.0007 \times V_r)$.
		High	$0.9437 - (0.0007 \times V_r)$.
Tabletop Water Heater	All	Very Small	$0.6323 - (0.0058 \times V_r)$.
		Low	$0.9188 - (0.0031 \times V_r)$.
		Medium	$0.9577 - (0.0023 \times V_r)$.
		High	$0.9884 - (0.0016 \times V_r)$.

---

[5] The term "represented values" includes all efficiency or performance-related information included in product ratings, nameplates, public representations (literature, product sheets, etc.).

TABLE II.1—PROPOSED CONSUMER WATER HEATER ENERGY CONSERVATION STANDARDS—Continued

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h	Very Small	0.7964 − (0.0000 × V_r).
		Low	0.8055 − (0.0000 × V_r).
		Medium	0.8070 − (0.0000 × V_r).
		High	0.8086 − (0.0000 × V_r).
	≥2 gal or ≤50,000 Btu/h	Very Small	0.3013 − (0.0023 × V_r).
		Low	0.5421 − (0.0024 × V_r).
		Medium	0.5942 − (0.0021 × V_r).
		High	0.6415 − (0.0017 × V_r).
Instantaneous Oil-fired Water Heater	All	Very Small	0.1430 − (0.0015 × V_r).
		Low	0.4455 − (0.0023 × V_r).
		Medium	0.5339 − (0.0023 × V_r).
		High	0.6245 − (0.0021 × V_r).
Instantaneous Electric Water Heater	All	Very Small	0.9161 − (0.0039 × V_r).
		Low	0.9159 − (0.0009 × V_r).
		Medium	0.9160 − (0.0005 × V_r).
		High	0.9161 − (0.0003 × V_r).
Grid-Enabled Water Heater	>75 gal	Very Small	1.0136 − (0.0028 × V_r).
		Low	0.9984 − (0.0014 × V_r).
		Medium	0.9853 − (0.0010 × V_r).
		High	0.9720 − (0.0007 × V_r).

*V_r is the rated storage volume which is the water storage capacity of a water heater (in gallons), as specified by the manufacturer.

TABLE II.2—PROPOSED RESIDENTIAL-DUTY COMMERCIAL WATER HEATER ENERGY CONSERVATION STANDARDS

Product class	Draw pattern	Uniform energy factor
Gas-fired Storage	Very Small	0.2670—(0.0009 × V_r).
	Low	0.5356—(0.0012 × V_r).
	Medium	0.5996—(0.0011 × V_r).
	High	0.6592—(0.0009 × V_r).
Oil-fired Storage	Very Small	0.2932—(0.0015 × V_r).
	Low	0.5596—(0.0018 × V_r).
	Medium	0.6194—(0.0016 × V_r).
	High	0.6740—(0.0013 × V_r).
Electric Instantaneous	Very Small	0.80.
	Low	0.80.
	Medium	0.80.
	High	0.80.

* V_r is the rated storage volume, which is the water storage capacity of a water heater (in gallons), as specified by the manufacturer.

The conversion factor formulas may be used for one year beginning on the date of publication of the conversion factor final rule in the **Federal Register**. After that time, all representations regarding energy efficiency or energy use must be based on testing (either directly or through the application of an AEDM, where permitted). In addition, EPCA requires that a water heater be considered to comply with the July 2014 final rule on and after July 13, 2015 (the effective date of the July 2014 final rule) and with any revised labeling requirements established by the FTC to carry out the July 2014 final rule if that water heater basic model was manufactured prior to July 13, 2015, and complied with the applicable efficiency standards and labeling requirements in effect prior to July 13, 2015. (See 42 U.S.C. 6295(e)(5)(K)) Sections III.F and III.G explain that DOE intends to address various issues related to the transition from the metrics in effect prior to July 13, 2015, through the use of enforcement policies.

III. Discussion

A. Purpose

As discussed in section I, DOE has undertaken this rulemaking to establish a mathematical conversion factor as a result of requirements added to EPCA by AEMTCA. (42 U.S.C. 6295(e)(5)) EPCA requires DOE to establish a uniform efficiency descriptor for consumer water heaters and commercial water heaters, and to establish a mathematical conversion factor to translate from the EF, TE, and SL descriptors to the uniform efficiency descriptor established by DOE. *Id.* In the July 2014 test procedure final rule, DOE established UEF as the uniform efficiency descriptor, and adopted a test method for measuring UEF for consumer and certain commercial water heaters. 79 FR 40542 (July 11, 2014). The current rulemaking addresses the mathematical conversion factor required by EPCA (see 42 U.S.C. 6295(e)(5)(E)) and the requirement that the efficiency standard be denominated according to the uniform efficiency descriptor (*i.e.*, UEF) (see 42 U.S.C. 6295(e)(5)(D)(i)).

Based on review of the test results used to develop the mathematical conversion factors, DOE has found that different water heaters are impacted in different ways by the new test method and metric, depending on the specific design and characteristics of the water heater. Water heaters have numerous attributes that impact energy efficiency and performance, and the changes to the test method and metrics impact each water heater model differently, often in ways that are difficult to predict. For example, two electric water heaters with the same rated storage volume, input rating, first-hour rating, and energy factor rating (all represented values published under the EF test method as indicators of water heater performance) have been shown by testing to have different measured first-hour ratings and uniform energy factors when tested under the new test procedure.

Given the number of models currently available in the market (756 unique basic models as of September 2015), it would not be practical to analyze each model individually to determine the change in represented values under the new test procedure. Rather, DOE has analyzed a subset of models that are representative of the market as a whole (see section III.D for further discussion of the models tested for this rule). This approach is consistent with the statutory mandate, which instructs DOE to develop "a mathematical conversion factor." (42 U.S.C. 6295(e)(5)(E)) DOE recognizes that the phrase "mathematical conversion factor" does not require DOE to generate a single number applicable to all water heaters. For one thing, DOE believes that, despite the use of the word "factor," in the singular, the statute permits the use of a conversion equation involving several numbers and mathematical operations besides multiplication. Still, the phrasing suggests that DOE should develop a formula that is broadly applicable, rather than generate a table of equivalencies stating the exact UEF equivalent for every individual product on the market.

Because each water heater is impacted differently, it would be impossible to develop a single equation, or reasonable set of equations, that could be used to model the energy performance of every water heater exactly under the new test method. Therefore, the purpose of this mathematical conversion factor is to develop an equation that will be able to reasonably predict a water heater's energy efficiency under the UEF test method based on values measured under the EF, TE, or SL test methods for that model.

Any mathematical conversion will have some amount of residual difference between predicted and measured values that is inherent when applying a mathematical equation (or multiple equations for different types of water heaters) to predict the energy efficiency performance or delivery capacity of a large set of models. In this rule, DOE has sought to minimize the amount of difference between predicted and actual performance in several ways. DOE incorporated as much test data as was practical and available, and which represented models currently on the market (see section III.D). DOE considered several attributes that could have a large impact on the test results under both the new and old metrics, and included those as appropriate when developing the mathematical conversion, which led to a set of equations for water heaters with certain different characteristics (*e.g.*, different fuel types, different nitrogen oxide (NO_X) emissions levels). DOE also explored several options for identifying the most accurate methodologies for developing the mathematical conversion equations (see section III.C). In addition, DOE sought feedback from interested parties and incorporated suggestions for improving the mathematical conversions when the suggested changes in approach resulted in conversion equations that were better predictors of actual measured performance.

As noted previously, this rulemaking also addresses the requirement that the efficiency standard be denominated in terms of UEF, and in this notice DOE proposes energy conservation standard levels using the UEF metric. (42 U.S.C. 6295(e)(5)(D)(i)) As discussed in section I, DOE may not adopt a standard that reduces the stringency of the existing standards, due to the "anti-backsliding" clause. (42 U.S.C. 6295(o)(1); 6313(a)(6)(B)(iii)(I)) Further, EPCA requires that the mathematical conversion factor not affect the minimum efficiency requirements. (42 U.S.C 6295(e)(5)(E)(iii)).

The methodology proposed in section III.E.3 for translating the standards is intended to ensure equivalent stringency between the existing standards (using EF, TE, and SL metrics) and the proposed updated standards (using UEF). Due to differences in water heater performance under the different test methods discussed in the preceding paragraphs, some models will perform better, and others worse, under the new test method than they did under the previous test method. Even though the stringency with respect to a specific model may vary based on the characteristics and performance of that model, the proposed approach for translating the standard is designed to maintain the same stringency for each product class as a whole. Because DOE's goal is to maintain the same stringency of the standards under the EF, TE, and SL metrics (*i.e.*, the standards in terms of the new UEF metric are neither more nor less stringent), and because individual models are impacted differentially by the change in test method and metric, some models that were previously minimally compliant will perform better than the translated UEF minimum, and others will perform worse. The possibility of such outcomes would not, by itself, mean that the conversion methodology was improper. As noted above, the possibility of some deviation for individual products is inherent in the use of a broad-based conversion equation. However, because the statute nonetheless mandates that the Department develop a "mathematical conversion factor," DOE understands the statute to permit the consequences that naturally follow from that approach.

B. Scope

The purpose of this section is to describe DOE's process for categorizing water heaters and establishing the range of units to be considered in this mathematical conversion factor rulemaking. DOE initially outlined the scope of this rulemaking in the April 2015 NOPR. 80 FR 20116, 20122–24 (April 14, 2015). In summary, this rulemaking includes all covered consumer water heaters, as well as commercial water heaters meeting the definition of "residential-duty commercial water heater." In the NOPR, DOE stated that it was not including water heaters that were not previously subject to the test procedures or standards for energy factor established in the Code of Federal Regulations in the scope of the conversion factor, as they are not required to be tested and rated for efficiency under the DOE test method. *Id.* Table III.1 lists the consumer water heaters that, for this reason, DOE did not propose a mathematical conversion factor in the NOPR.

TABLE III.1—CONSUMER WATER HEATERS NOT COVERED IN THE NOPR BY THE MATHEMATICAL CONVERSION FACTOR

Product class	Description of criteria for exclusion from conversion rulemaking
Gas-fired Storage	Rated Storage Volume ≥2 gal and <20 gal or >100 gal.
Oil-fired Storage	Rated Storage Volume >50 gal.
Electric Storage	Rated Storage Volume ≥2 gal and <20 gal or >120 gallons.
Tabletop	Rated Storage Volume ≥2 gal and <20 gal or >120 gallons.
Gas-fired Instantaneous	Rated Input ≤50,000 Btu/h; Rated Storage Volume ≥2 gal.

TABLE III.1—CONSUMER WATER HEATERS NOT COVERED IN THE NOPR BY THE MATHEMATICAL CONVERSION FACTOR—Continued

Product class	Description of criteria for exclusion from conversion rulemaking
Electric Instantaneous	Rated Storage Volume ≥2 gal.
Oil-fired Instantaneous	All.

DOE has further considered the applicability of standards to the products listed in Table III.1 and proposes to clarify that the initial energy conservation standards in EPCA, as listed in Table I.1, are applicable to gas-fired, electric, and tabletop water heaters below 20 gallons storage volume; gas-fired water heaters above 100 gallons storage volume; oil-fired water heaters above 50 gallons storage volume; electric and tabletop water heaters above 120 gallons storage volume; gas-fired instantaneous water heaters with an input at or below 50,000 Btu/h or at or above 2 gallons storage volume; electric instantaneous water heaters at or above 2 gallons; and oil-fired instantaneous water heaters. These products were not considered in DOE's rulemakings that culminated in the April 16, 2010 and January 17, 2001 final rules (75 FR 20112 and 66 FR 4474, respectively), and accordingly, the standards adopted in those final rules are not applicable to these products.

DOE notes that EPCA's definitions for consumer water heaters do not place any limitation on the storage volume or specify a minimum fuel input rate for gas-fired instantaneous water heaters. Thus, DOE has tentatively concluded that the initial standards for water heaters included in EPCA were intended to cover all water heaters meeting the definition of a "water heater" at 42 U.S.C. 6291(27) and would apply regardless of the storage volume, and without a lower limit on the fuel input rating for gas-fired instantaneous water heaters.

In this SNOPR, DOE used the applicable conversion equations to convert the EPCA-established standards applicable to the products in Table III.1 from EF to UEF. For electric water heaters, as discussed in section I, in the October 17, 1990 test procedure final rule, DOE determined that the standard set by EPCA required adjustment under 42 U.S.C. 6293(e) due to the effect of the change in test procedure. 55 FR 42162, 42164. DOE believes the impact on measured energy characterized in the October 1990 test procedure final rule resulting from the change in the test procedure is valid for all consumer electric water heaters and not just those limited to the gallon sizes specified in the October 1990 test procedure final rule. Accordingly, DOE has used the standard level adopted in the 1990 test procedure final rule for establishing converted UEF standards for electric water heaters with storage volumes below 20 gallons and above 120 gallons.

DOE has found that oil-fired instantaneous water heaters exist on the market and are available for sale within the United States. Oil-fired instantaneous water heaters were not defined under the EF test procedure, nor were these products defined by DOE at 10 CFR 430.2 prior to the effective date of the July 2014 test procedure final rule that established the UEF metric. However, oil-fired instantaneous water heaters are defined by EPCA at 42 U.S.C. 6291(27)(B), were added to the definitions at 10 CFR 430.2 in the July 2014 test procedure final rule, and are covered by the UEF test procedure. Because oil-fired instantaneous water heaters were not previously tested to the EF test procedure, a conversion factor is not necessary (as manufacturers would not have EF ratings to convert). Rather, manufacturers of oil-fired instantaneous water heaters who wish to make representations of efficiency should test to the UEF metric. However, DOE must still convert the energy conservation standard established by EPCA from EF to UEF. The steps taken for this conversion are explained in section III.E.3.

As noted in section I, EPCA was recently amended to define and set efficiency requirements for grid-enabled water heaters in terms of EF, so DOE has included the development of a conversion factor and updated standard for these products in this SNOPR. DOE has tentatively determined that these products do not meet the criteria for exclusion from the UEF metric.

Only commercial water heaters meeting the definition of "residential-duty commercial water heater" are subject to the uniform efficiency descriptor test method, while all other commercial water heaters are not. As a result, this conversion only addresses commercial water heaters that meet the definition of "residential-duty commercial water heater," which includes commercial water heaters that:

(1) For models requiring electricity, uses single-phase power;

(2) Are not designed to provide outlet hot water at temperatures greater than 180 °F; and

(3) Are not excluded by the limitations regarding rated input and storage volume presented in Table III.2.

TABLE III.2—CAPACITY LIMITATIONS FOR DEFINING COMMERCIAL WATER HEATERS WITHOUT CONSUMER APPLICATIONS (*i.e.,* NON-RESIDENTIAL-DUTY)

Water heater type	Indicator of non-consumer application
Gas-fired Storage	Rated input >105 kBtu/h; Rated storage volume >120 gal.
Oil-fired Storage	Rated input >140 kBtu/h; Rated storage volume >120 gal.
Electric Storage	Rated input >12 kW; Rated storage volume >120 gal.
Gas-fired Instantaneous	Rated input >200 kBtu/h; Rated storage volume >2 gal.
Electric Instantaneous	Rated input >58.6 kW; Rated storage volume >2 gal.
Oil-fired Instantaneous	Rated input >210 kBtu/h; Rated storage volume >2 gal.

Additionally, DOE notes that for several types of water heaters, definitional criteria preclude their classification as residential-duty commercial water heaters. For example, an electric storage water heater with a rated input of greater than 12 kW would not be a residential-duty commercial water heater, as it is excluded under the definition of ''residential-duty commercial water heater'' based on its rated input; conversely, an input rating at or below 12 kW would place an electric storage water heater in the consumer water heater category under EPCA. (See 42 U.S.C. 6291(27)(A)). Therefore, there is no input rating at which an electric storage water heater would be classified as a residential-duty commercial water heater. Similarly, EPCA defines gas-fired instantaneous water heaters with an input of 200,000 Btu per hour or less, oil-fired instantaneous water heaters with an input of 210,000 Btu per hour or less, and heat pump type water heaters with a rated input of 12 kW or less, or a rated current of 24 amps or less at a rated voltage of not greater than 250 volts, as consumer water heaters. (42 U.S.C. 6291(27)(B)). The residential-duty commercial water heater criteria in Table III.2 exclude models with input rates above the input limits from being residential-duty commercial water heaters. Any water heaters above the applicable limits would be considered non-residential-duty commercial water heaters, and any water heaters at or below the applicable limits would be consumer water heaters. Therefore, in a NOPR for test procedures for certain commercial water heating equipment published on May 9, 2016 (''May 2016 CWH TP NOPR''), DOE is proposing to expressly exclude these four classes—electric storage water heaters, heat pump water heaters, gas-fired instantaneous water heaters, and oil-fired instantaneous water heaters—from the definition for ''residential-duty commercial water heater'' codified at 10 CFR 431.102. 81 FR 28588, 28607, 28637. Consequently, a mathematical conversion and a standard in terms of UEF are only necessary for the types of water heaters that can be defined as residential-duty commercial water heaters: gas-fired storage water heaters, oil-fired storage water heaters, and electric instantaneous water heaters.

In response to the April 2015 NOPR proposals, Air-Conditioning, Heating, and Refrigeration Institute (AHRI) commented that residential-duty commercial electric storage water heaters should have a conversion because electric water heaters that were designed with input rates less than or equal to 12 kW and deliver water at temperatures of 180 °F were previously (*i.e.*, before changes to the DOE definition for ''electric storage water heater'' were adopted in the July 2014 test procedure final rule) not considered to be consumer products. (AHRI, No. 13 at p. 6) As discussed in the preceding paragraph, there are no electric storage water heaters that would be classified as residential-duty commercial water heaters. EPCA includes as consumer electric storage water heaters those having an input rating less than or equal to 12 kW and does not distinguish between the consumer and commercial classifications by delivery temperature. (42 U.S.C. 6291(27)(A)) Therefore, electric storage water heaters with input rates at or below 12 kW are covered consumer products (rather than commercial equipment) regardless of the delivered water temperature. Thus, the product that AHRI discusses—electric storage water heaters rated at or below 12 kW but designed to deliver water at temperatures above 180 °F—would be classified as a consumer product under EPCA and would not be eligible for classification as a residential-duty commercial water heater under DOE's definitions at 10 CFR 431.102. DOE is, therefore, not proposing a conversion factor for residential-duty commercial electric storage water heaters, as there can be no such equipment. As proposed in this SNOPR, a product such as that described by AHRI would rely on the conversion that has been proposed for electric storage water heaters generally. Further, although electric storage water heaters that are designed with input ratings less than or equal to 12 kW and to deliver water at temperatures of 180 °F were not included in the consumer water heater energy factor test procedure,[6] they are consumer products. As consumer products, such water heaters are not required to be tested under the metric for commercial electric storage water heaters (*i.e.*, standby loss). Rather, since such products are classified as consumer products under the statute, DOE proposes to clarify that they should be tested and rated under the UEF test method. In the event that the UEF test method does not apply, manufacturers should submit a petition for waiver DOE (see 10 CFR 430.27) that would allow them to test and rate their products to the appropriate consumer water heater efficiency metrics. DOE is proposing in a separate rulemaking to clarify the definitions for specific kinds of consumer water heaters by removing the specifications related to the water delivery temperature. 81 FR 28636. Finally, DOE notes that a water heater that meets the definition of a consumer electric storage water heater must be tested and rated as a consumer electric storage water heater, even if it is marketed as part of a commercial product line.

AHRI also commented that residential-duty electric instantaneous water heaters exist as defined in the UEF test procedure and, therefore, need a conversion. (AHRI, No. 13 at p. 6) DOE agrees that residential-duty commercial electric instantaneous water heaters exist on the market and that they are currently subject to the commercial water heating equipment test procedures. 10 CFR 431.106. Commercial electric instantaneous water heaters are also subject to the energy conservation standards for commercial instantaneous water heaters established in EPCA. (42 U.S.C. 6313(a)(5)(D)–(E)).[7] Specifically, for commercial instantaneous water heaters with a storage volume of less than 10 gallons, the minimum thermal efficiency is 80 percent. For commercial instantaneous water heaters with a storage volume of 10 gallons or greater, the minimum thermal efficiency is 77 percent, and the maximum standby loss is 2.30 + (67/Measured Storage Volume [in gallons]) percent per hour. Because residential-duty electric instantaneous commercial water heaters are required to have a storage volume of 2 gallons or less, the former standard level would apply to this equipment. 10 CFR 431.102. Therefore, DOE has tentatively decided to provide a mathematical conversion factor for residential-duty commercial electric instantaneous water heaters. DOE also proposes energy conservation standards for residential-duty commercial electric instantaneous water heaters denominated in the UEF metric. See section III.E.2.d for further discussion of the mathematical conversion for this equipment.

C. Approaches for Developing Conversions

This section provides the approaches that DOE is considering in developing equations to convert from prior metrics to the new metrics, including the benefits and drawbacks of each approach and details on how the equations were derived.

To develop the conversions between the prior metrics (first-hour rating, maximum GPM, energy factor, thermal efficiency, standby loss) and the new metrics (first-hour rating, maximum GPM, uniform energy factor), DOE has broadly considered two different approaches. The first, termed "analytical methods," uses equations based on the fundamental physics of water heater operation to predict how changes in test parameters lead to changes in the performance metrics. The second approach, termed "empirical regression," is a purely data-driven approach that uses experimental data and regressions to develop equations that relate the prior metrics to the new ones. In addition, DOE is also considering a hybrid approach that uses both techniques.

---

[6] Prior to being updated by the July 11, 2014 final rule (79 FR 40542, 40567), the Uniform Test Method for Measuring the Energy Consumption of Water Heaters at appendix E to subpart B of 10 CFR 430 included a definition for ''Electric Storage-type Water Heater'' that included only, in relevant part, models designed to heat and store water at a thermostatically-controlled temperature of less than 180 °F.

[7] In a NOPR for energy conservation standards for commercial water heating equipment published on May 31, 2016, DOE proposed to codify the energy conservation standards in EPCA for commercial electric instantaneous water heaters at 10 CFR 431.110. 81 FR 34440, 34535–36.

1. Overview of Analytical Methods Approach

The analytical methods approach relies on basic equations of heat transfer and thermodynamics, as well as established understanding of the behavior of water heaters, to estimate the metric based on a set of known parameters for the water heater, environment, and test pattern. Such an approach typically yields an equation or set of equations that can be solved to ultimately yield the metric of interest, either an efficiency or delivery capacity. An attempt is then made to manipulate the equations for the metrics to yield an equation that expresses the new metrics in terms of the old metrics and other known quantities. Analytical methods have the advantage of capturing known effects on performance without conducting a series of experiments. Additionally, a properly formulated relationship would be expected to be applicable to all water heaters on the market. Analytical approaches do have some drawbacks, however. Most notably, these methods only account for factors that are known to impact performance and which can be readily estimated. There may be other phenomena that affect performance that may not be included in the known models. Second, application of these models often require assumptions about conditions. For example, one may need to assume a particular temperature of the water in the water heater despite the fact that it is known that there is variation in that temperature. Lastly, while an analytical model reduces the amount of tests needed to generate a conversion equation, a thorough set of experiments is still necessary to validate the model. Because it is based on fundamental physics, though, an analytical model can typically be extended with more confidence to a water heater that has not been tested than would a model based purely on experimental data.

Section III.C.4 discusses approaches that DOE has considered for developing analytical models to convert from prior metrics to new metrics for both delivery capacity and energy efficiency of water heaters under the uniform energy factor rating method.

2. Overview of Empirical Regression Approach

The second category of conversion factors considered by DOE is empirical regression. In this approach, a collection of water heaters is tested according to both the former test procedure and the new test procedure. The resultant performance metrics, as well as other data on the units (*e.g.,* storage volume, input rate), are compiled, and statistical techniques are used to create correlations that relate the new performance metrics to the prior metrics and characteristics. No consideration of the underlying physics is used in this approach. Rather, it is purely a data-driven method. The advantage of this approach is that the results are not biased by existing assumptions on how a water heater should behave under given conditions, with the results representing exactly what is observed in actual comparison testing. This approach should capture all factors that affect the energy efficiency and delivery capacity, even though those factors may not be known *a priori.*

Empirical regression also has some drawbacks. One drawback is that the resulting equations are most confidently applied to water heaters with attributes similar to those that were tested. Consequently, to minimize uncertainties, a large sample for testing is often appropriate to capture more fully many of the nuances in water heater design. If extended to units not sufficiently similar to those that were tested, the equations may produce unacceptably large differences between predicted and measured values if a feature on the untested model has an effect that is not captured in the experimental data. Another major drawback is that empirical regression is susceptible to experimental uncertainties. While uncertainties can be reduced through careful quality checks of experimental data, uncertainty is present in any test. The empirical regressions, being based on many samples across multiple different units, will further reduce the uncertainty, but some amount of uncertainty in the regression may be unavoidable.

Section III.C.5 presents the details of the empirical regression approaches explored by DOE.

3. Overview of Hybrid Approach

DOE has also considered a combination of the analytical methods approach and empirical regression approach, termed a hybrid approach. In this approach, a broad range of water heaters are tested, as would be done in using empirical regression. An additional factor is added to the list of attributes that is examined in the regression; this factor uses the analytical methods to first estimate the converted value. This estimate of the revised performance metric (maximum GPM, first-hour rating, or UEF) for each water heater tested is then used as an independent variable in a regression to determine the measured UEF. DOE believes that this approach takes advantage of the ability of the analytical methods approach to capture the major known factors that affect the efficiency, yet adds the additional step of regression to account for any influences that are not well described by the analytical methods.

4. Analytical Methods Approach

a. Maximum GPM

For flow-activated water heaters, the delivery capacity under the EF and UEF test procedures is determined by the 10-minute maximum GPM rating test. During this test, the water heater runs at maximum firing rate to raise the temperature from a starting value of 58 °F ± 2 °F to the prescribed delivery temperature. This flow rate is determined by the following equation:

$$\dot{V} = \frac{Q \cdot \eta_r}{\rho c_p (T_{del} - T_{in})}$$

where $\dot{V}$ is the volumetric flow rate of water, Q is the firing rate, η_r is the recovery efficiency, ρ is the density of the delivered water, c_p is the specific heat of the delivered water, T_{del} is the delivered water temperature, and T_{in} is the inlet water temperature.

In the April 14, 2015 NOPR, DOE proposed to convert prior maximum GPM represented values to those represented values under the amended test procedure by accounting only for the change in T_{del} from 135 °F to 125 °F and for the change in the density and specific heat of water at the new delivery temperature. 80 FR 20116, 20125. The equation above can be evaluated for both delivery temperatures, and an expression for the maximum GPM under the uniform efficiency descriptor ($\dot{V}_{UED}$) as a function of the prior maximum GPM rating ($\dot{V}_{ex}$) was proposed as:

$$\dot{V}_{UED} = 1.147 \dot{V}_{ec}$$

Northwest Energy Efficiency Alliance (NEEA) commented that the relatively simple physics associated with water flow rate and temperature rise made this conversion relatively robust, but that some anomalies were present in comparing measured and analytical ratings. (NEEA, No. 15 at p. 6) As noted in the data presented in the NOPR, DOE found this conversion equation to match well with measured data and is proposing it in a slightly modified version as the method to convert from the prior maximum GPM rating to the maximum GPM rating under the uniform energy descriptor. In the NOPR, the specific heat values were calculated using the delivery temperatures of 125 °F and 135 °F for the EF and UEF test procedures, respectively. In this SNOPR, the specific heat values are calculated using the average of the delivery temperature (*i.e.*, 125 °F and 135 °F for the EF and UEF test procedures, respectively) and the inlet temperature (*i.e.*, 58 °F for both test procedures). Further, the multiplier is shown to the fourth decimal place to be more consistent with the other equations presented in this SNOPR. Upon recalculation using appropriate values of density and specific heat, the proposed conversion equation is:

$$\dot{V}_{UED} = 1.1461\dot{V}_{ec}$$

b. First-Hour Rating

In the April 14, 2015 NOPR, DOE indicated that it was not aware of any analytical models that would mathematically represent the conversion of first-hour ratings from the prior test method to the amended test method. 80 FR 20116, 20125. NEEA questioned why DOE would make a statement in this regard, but then go on to propose a mathematical construct for doing so. (NEEA, No. 15 at p. 5) DOE notes that the mathematical construct proposed to convert first-hour ratings is based purely on regression analysis to measured data and that DOE used the terminology "analytical model" to represent physics-based equations that relate the two quantities. No comments were received that proposed an analytical model for converting first-hour ratings, so DOE continues to propose to use data-driven regression analysis to convert prior first-hour ratings to amended first-hour ratings, as discussed in section III.E.2.

c. Uniform Energy Factor

A number of changes to the 24-hour simulated-use test will alter the represented values of water heater energy efficiency under the prior water heater test procedures as compared to the represented values obtained under the uniform efficiency descriptor test method. Among the key changes that are expected to alter the efficiency metric for consumer water heaters are: (1) A different volume of water withdrawn per test; (2) a change in the draw pattern (*i.e.*, number of draws, flow rates during draws, timing of draws) applied during the test; (3) reduction of the test temperature from an average stored temperature of 135 °F to a delivered water temperature of 125 °F; and (4) removal of the stipulation to normalize the energy consumption to maintain a prescribed average water temperature within the storage tank. Residential-duty commercial water heaters will see a change from the thermal efficiency and standby loss metrics to the UEF, which consists of an entirely new approach for rating efficiency.

i. Consumer Storage Water Heaters

In the April 14, 2015 NOPR, DOE proposed to use the Water Heater Analysis Model (WHAM) as a basis for conversion. 80 FR 20116, 20126–27. This model first determines the amount of energy input (Q) over a 24-hour period using the following equation:

$$Q = \frac{\rho c_p V (T_{del} - T_{in})}{\eta_r}\left(1 - \frac{UA(T_{tank} - T_{amb})}{P}\right) + 24 \cdot UA \cdot (T_{tank} - T_{amb})$$

where ρ is the density of water, c_p is the specific heat of water, η_r is the recovery efficiency, V is the volume of water delivered per day, T_{del} is the delivered water temperature, T_{in} is the inlet water temperature, UA is the heat loss factor, T_{tank} is the average temperature of the water stored within the tank of a storage water heater, P is the input power to the water heater in Btu/h, T_{amb} is the average ambient temperature during the test, and 24 is the number of hours in the test. This equation considers the energy required to heat the water that is delivered by the water heater from the inlet water temperature up to the delivery temperature and the energy required to make up the heat lost from the water heater to the surrounding environment. The time over which this standby energy loss is determined is corrected by the term with the power in the denominator to account for the fact that η_r, as calculated in the test, accounts for standby energy loss during periods when heat input to the water is activated.

This calculated energy can then be used to estimate the daily efficiency, Eff, under a given daily water demand (*e.g.*, that required during the EF test or that required during the UEF test):

$$Eff = \frac{\rho c_p V (T_{del} - T_{in})}{Q}$$

Since the EF testing entails a prescribed T_{del} (135 °F), T_{in} (58 °F), T_{tank} (135 °F), T_{amb} (67.5 °F), and V (64.3 gallons), the two equations can be solved for the two remaining unknowns, Q and UA. After the equations are solved to determine UA, if one assumes that the UA and η_r do not change under the new test approach, then the two equations can be solved again (this time inserting the UA value obtained from solving the previous set of equations) to determine the values for Q and Eff (*i.e.*, UEF) under the uniform efficiency descriptor test method using the prescribed values for the uniform efficiency descriptor test procedure of T_{del} (125 °F), T_{in} (58 °F), T_{tank} (125 °F), T_{amb} (67.5 °F), and V (varies depending upon draw pattern).

DOE received a number of comments with suggested improvements to the WHAM model. Several commenters addressed the assumption that the average tank temperature, T_{tank}, is equal to the average delivered water temperature, T_{del}. Rheem indicated that the delivered hot water temperature is greater than the average water temperature in the tank due to stratification and that the temperature difference needs to be accounted for more accurately in the analytical equations. (Rheem, No. 11 at p. 6) AHRI asked DOE to reconsider the assumption that the delivered water temperature is the same as the stored water temperature. (AHRI, No. 13 at p. 7) Bradford White added that the delivered temperature is typically close to the average tank temperature for electric water heaters, but this assumption is often not correct on gas-fired water heaters that can have a stratified tank with an average tank temperature that is much lower than the delivered temperature. (Bradford White, No. 14 at p. 2) NEEA commented that DOE has incorporated indefensible tank temperature assumptions that are far enough off to make the conversion factors significantly inaccurate, and that temperature differences between the top and bottom of tall tanks can be up to 10 °F, leading to differences between T_{del} and T_{tank} of 5 °F. (NEEA, No. 15 at p. 2)

To address these concerns, DOE examined test data and assessed the effect of changes in T_{tank} on the predictions of the WHAM analytical model. The average delivered water temperature during draws was compared to the average tank temperature during standby periods for a subset of the gas-fired and electric storage water heaters tested. For consumer electric storage water heaters, the average delivered water temperature was 6.8 °F higher than the mean tank temperature, with a standard deviation of 4.4 °F. For consumer gas-fired water heaters, the delivered water temperature was found to be only 1.5 °F greater than the average tank temperature, with a standard deviation of 4 °F. These results raise questions about the statements by commenters that the delivered water temperature is always much greater than the average tank temperature. DOE's observation in these tests is that on occasion, the delivered temperature is less than the average tank temperature that was recorded during the standby portion of the test. That observation is inconsistent with the commenters' suggestion, and DOE has identified several potential reasonable explanations for the observations. From examination of test data, it appears that there are several periods during the test when a recovery occurs such that there is an extended time following the recovery before the start of the next draw, meaning that the temperature of the water in the tank has cooled from the level it attains after a recovery. Additionally, standby periods often occur shortly after a tank recovery, meaning that the average tank temperature is relatively high during those periods. These two characteristics of the tests could certainly lead to situations where the average delivered water temperature is not always significantly greater than the average tank temperature during standby.

Next, DOE compared measured UEF values to the predictions of the WHAM model with different settings for T_{tank}. As discussed further later in this section, these WHAM predictions were also computed with different assumptions on the changes in recovery efficiency and the UA values from the EF test to the UEF test. In all cases, an assumption of T_{tank} = 125 °F resulted in lower root-mean-square deviations (RMSDs) between predicted and measured values, suggesting that an assumption of T_{tank} = 125 °F is appropriate. DOE subsequently computed WHAM predictions with T_{tank} assumed down to 110 °F and found that the assumption of T_{tank} = 125 °F held as the best predictor of measured performance.

In summary, DOE has found that a disparity between T_{tank} and T_{del} exists but not to the extent that commenters have stated. Further, using T_{tank} values below 125 °F within the WHAM model does not result in a better prediction of performance. Therefore, DOE continues to propose an assumed average tank temperature of 125 °F in the WHAM calculations that are part of the conversion of EF to UEF.

Comments were received on DOE's assumption in the WHAM model that the recovery efficiency and the UA values do not change from the EF test to the UEF test. Bradford White disagreed with the belief that the UA and recovery efficiency do not change with the change in storing water at 135 °F versus delivering at 125 °F. (Bradford White, No. 14 at p. 2) NEEA commented that the recovery efficiency of heat pump water heaters changes dramatically with different stored water temperature and disputed DOE's contention that a 7-percent change in UA is immaterial to the WHAM calculation. (NEEA, No. 15 at p. 3) DOE notes that the WHAM model is not used in the conversion that has been proposed for heat pump water heaters (rather DOE proposes the conversion derived from empirical regression), so NEEA's comment regarding the variation in recovery efficiency of heat pump water heaters is not germane to this issue. Lutz suggested a different approach for determining the key performance metrics when test conditions change from an average stored water temperature of 135 °F to an average delivered water temperature of 125 °F. (Lutz, No. 16 at pp. 4–6) Lutz recommends an approach whereby a thermal standby loss and a conversion efficiency are obtained from metrics reported in the EF test, and that these terms are used to estimate energy consumption under the UEF test.

To evaluate these suggestions, DOE first examined test data to estimate changes in both UA and recovery efficiency arising from changes in test temperature. To remove any variability in these metrics arising from changes in the procedures used to compute them, DOE focused on a subset of tests in which the same draw pattern and calculation procedure were used with the thermostats set according to the EF test procedure or the UEF test procedure. By focusing on a comparison of recovery efficiency and UA obtained during those two tests, effects of the calculation procedure are minimized to allow the focus to be placed on changes in tank temperature. It was found that the UA of both gas-fired and electric storage water heaters dropped an average of 7 percent, with a standard deviation of 3 percent. While it was assumed that the recovery efficiency of electric storage water heaters stays at 0.98, the recovery efficiency of gas-fired storage water heaters was found to increase 2 percent at a delivered temperature of 125 °F compared to a stored water temperature of 135 °F. Given these values, DOE then explored how changes in the UA value and recovery efficiency affected overall WHAM predictions of the UEF for all water heaters tested. The UA was reduced by 7 percent and the recovery efficiency increased 2 percent from their values determined in the EF test. Combinations of the different settings of UA, recovery efficiency, and T_{tank} were used (a total of 8 in all), and RMSDs were computed. The RMSD was lowest under the assumption that the UA and recovery efficiency were the same from the EF test to the UEF test. This finding held when all water heaters were grouped together, as well as when they were separated by fuel type (*i.e.*, electric and gas). While limited testing indicated that reducing the set point temperature changed the recovery efficiency and UA values, when applied to the entire dataset, the model produced predictions with lower RMSDs under the assumption of no change in recovery efficiency or UA values.

DOE also compared predictions from procedures described by Lutz to the measured data. DOE found that the RMSD when comparing all water heaters was essentially the same as for the WHAM model, with the RMSD of the Lutz approach being slightly lower for electric water heaters and slightly higher for gas-fired water heaters.

In summary, DOE found that the WHAM model provided more accurate predictions of actual performance when T_{tank} is assumed to be 125 °F and the values for UA and recovery efficiency are assumed identical under both the EF and UEF test procedures. Further, when comparing the WHAM and Lutz methods, the RMSDs were found to be essentially the same. Therefore, DOE proposes to use as the basis of its conversion factors for consumer storage water heaters the WHAM model with an assumed T_{tank} = 125 °F and an assumption that the recovery efficiency and UA values are identical under the UEF test, as they are under the EF test.

Rheem commented that the method of deriving the coefficients presented in the NOPR to determine the WHAM predictions was not clear, and AHRI stated that more information was needed on these coefficients. (Rheem, No. 11 at p. 6; AHRI, No. 13 at p. 5) In this SNOPR, DOE is presenting more details on the derivation of the equations it is proposing for converting from prior metrics to the UEF. Additionally, the coefficients are modified from the version provided in the NOPR on account of different algebraic approaches. In the equations below, variables with a subscript "N" refer to the UEF test procedure. Variables with a subscript "C" refer to the EF test procedure.

The first step is to express the UEF in terms of the delivered thermal energy and the energy consumed:

$$UEF = \frac{Q_{del,N}}{Q_N} = \frac{A}{\frac{A}{\eta_r}\left(1 - \frac{UA}{P}B\right) + 24B \cdot UA}$$

where:

$A = \rho_N C_{p,N} V_N (T_{del,N} - T_{in})$

$B = T_{tank,N} - T_{amb}$

It is assumed that the recovery efficiency and UA values are the same for both tests. The density, ρ, is evaluated at the delivery temperature, T_{del}, and the specific heat, C_p, is evaluated at the average of T_{del} and the inlet temperature, T_{in}. V is the volume delivered for the particular simulated use profile implemented during the UEF test.

The UEF equation can be rearranged to yield the following form:

$$UEF = \frac{1}{{}^{1}\!/\!_{\eta_r} + UA\left(\frac{24B}{A} - \frac{B}{P\eta_r}\right)}$$

The input power is given by the variable P. In this equation, UA is unknown, so it must be determined from the EF test. The WHAM equation for the energy consumed during the EF test, Q_C, is:

$$Q_C = \frac{\rho_C\, c_{p,C}\, V_C\, (T_{del,C} - T_{in,C})}{\eta_r}\left(1 - \frac{UA\,(T_{tank,C} - T_{amb,C})}{P}\right) + 24\, UA\, (T_{tank,C} - T_{amb,C})$$

This equation can be rearranged to yield an expression for UA:

$$UA = \frac{Q_C - D/\eta_r}{24E - DE/(\eta_r P)}$$

Where:

$D = \rho_c C_{p,c} V_c (T_{del,c} - T_{in})$

$E = (T_{tank,c} - T_{amb})$

With Q_c = D/EF, the equation above for UA can be rewritten as:

$$UA = \frac{1/EF - 1/\eta_r}{24E/D - E/(\eta_r P)}$$

Substituting this expression for UA into the equation above for UEF, one obtains the following expression for UEF:

$$UEF = \left[\frac{1}{\eta_r} + \left(\frac{1}{EF} - \frac{1}{\eta_r}\right)\left\{\frac{(24B/A)P\eta_r - B}{(24E/D)P\eta_r - E}\right\}\right]^{-1}$$

Known terms in this equation can be further grouped in the following form:

$$UEF = \left[\frac{1}{\eta_r} + \left(\frac{1}{EF} - \frac{1}{\eta_r}\right)\left\{\frac{aP\eta_r - b}{cP\eta_r - d}\right\}\right]^{-1}$$

The values for these coefficients a, b, c, and d are presented in Table III.3.

TABLE III.3—COEFFICIENTS FOR THE PROPOSED ANALYTICAL UEF CONVERSION FACTOR FOR CONSUMER STORAGE WATER HEATERS

Draw pattern	a	b	c	d
Very Small	0.250266	57.5	0.039864	67.5
Low	0.065860	57.5	0.039864	67.5
Medium	0.045503	57.5	0.039864	67.5
High	0.029794	57.5	0.039864	67.5

ii. Consumer Instantaneous Water Heater

Regarding the analytical method to convert prior represented values for consumer instantaneous water heaters to UEF, NEEA argued that technology differences can cause complications with analytical methods but did not suggest any particular improvements to the methods proposed by DOE. (NEEA, No. 15 at p. 6) AHRI stated that the determination of N*, which is the number of draws from which heat loss occurs to the environment, does not factor in the low-fire testing per the EF test procedure nor the changes in the flow rate used for the test. (AHRI, No. 8 at p. 3) DOE agrees with AHRI's observation, and is modifying its analytical model for consumer instantaneous water heaters accordingly to account for this change.

The loss factor represents the amount of energy stored in the materials making up the instantaneous water heater. Its value was obtained in the NOPR by examining test data and applying the following equation for each test:

$$Q = \frac{\rho c_p V(T_{del} - T_{in})}{\eta_r} + LF \cdot N^* \cdot (T_{del} - T_{amb})$$

In the April 2015 NOPR, DOE indicated that N* is the total number of draws during the test scaled with respect to the standby time occurring after the draw is completed. 80 FR 20116, 20127 (April 14, 2015). Those draws that are followed by less than one hour contribute a fractional value to N* that is equal to the standby time in minutes following the draw divided by 60 minutes, while the draws that are followed by one hour or more contribute a value of one to N*. To determine the loss factor (LF) from the equation above, data are obtained from the EF test, but, as AHRI notes, the N* depends upon the length of those six draws in the test. Those draws are of different length, with the first three occurring at maximum flow rate and the final three occurring at minimum flow rate. Therefore, the value of N* will not be constant for all water heaters. Instead, DOE computed a separate value of N* for each test based upon reported data on the flow rates of each draw. From these flow rates, an estimate of the length of each draw was obtained, and the standby time before the next draw could be computed. Given this adjusted technique, along with additional test data collected since the NOPR, DOE computed new loss factors. It found that loss factors were different for electric instantaneous water heaters than for gas-fired instantaneous water heaters, so it is using different analytical equations for gas-fired and electric models. The loss factor, LF, being used is 0.592 Btu/°F for gas-fired instantaneous water heaters, and LF for electric instantaneous water heaters is 0.084 Btu/°F.

The loss factor, N* for the new draw patterns of the UEF test, and the test conditions imposed in the UEF test are used with the equation above to estimate the energy consumed for a particular draw pattern for either electric or gas-fired units. The UEF can be determined as:

$$UEF_{model} = \frac{Q_{del}}{Q_{del}/\eta_r + LF \cdot N^* \cdot (T_{del} - T_{amb})}$$

The energy delivered as hot water, Q_{del} (= $\rho c_p V(T_{del} - T_{in})$), and N* depend upon the draw pattern. The delivered temperature is assumed to be 125 °F, and the ambient temperature is assumed to be 67.5 °F. This equation can be rearranged by multiplying the numerator and denominator by η_r/Q_{del}, resulting in an equation of the form:

$$UEF_{model} = \frac{\eta_r}{1 + A\eta_r}$$

where:

$$A = \frac{LF\ N^*\ (T_{del} - T_{amb})}{\rho\ c_p\ V\ (T_{del} - T_{in})}$$

Density, ρ, is computed at the delivery temperature of 125 °F, and c_p is computed at the average of the delivery temperature and the inlet temperature, or 91.5 °F. The values for N* and A are provided in Table III.4.

TABLE III.4—N* AND COEFFICIENTS FOR THE PROPOSED ANALYTICAL UEF CONVERSION FACTOR FOR CONSUMER INSTANTANEOUS WATER HEATERS

Draw pattern	N*	A	
		Electric	Gas
Very Small	4.36	0.003819	0.026915
Low	6.72	0.001549	0.010917
Medium	7.45	0.001186	0.008362
High	7.53	0.000785	0.005534

iii. Residential-Duty Commercial Storage Water Heaters

Regarding the analytical method to convert standby loss and thermal efficiency metrics for residential-duty commercial water heaters to UEF, DOE received comments from Rheem, AHRI, and NEEA. NEEA stated that there is poor agreement between predictions and measured values and indicated that there must be some missing variables or factors, but NEEA also commented that it is not clear what those factors might be. (NEEA, No. 15 at p. 6) Rheem argued that DOE needs to replace the "24" multiplier with the difference between 24 and the burner on-time in the 24-hour testing period to account for the actual time of heat loss during the test. (Rheem, No. 11 at p. 6) AHRI commented that UA losses only occur when the burner is not firing, so the 24 hours should be reduced by the total burner on time over the simulated day. (AHRI, No. 13 at p. 7)

In response to NEEA's comment, DOE has evaluated the factors included in the analytical model and has not identified other terms that would increase the accuracy of the predictions. In any case, to the extent unknown factors are important, the use of regressions on top of the analytical approach should account for such factors.

DOE agrees with the comments from Rheem and AHRI and is modifying the analytical equation used to predict UEF for residential-duty water heaters to adjust the time of application of standby losses. The new equation proposed for estimating the energy consumption of a residential-duty commercial water heater as a function of standby loss, SL, thermal efficiency, E_t, and input power, P, is:

$$Q = \frac{\rho c_p V(T_{del} - T_{in})}{E_t}\left[1 - \frac{(SL/70)(T_{tank} - T_{amb})}{P}\right] + 24 \cdot \frac{SL}{70} \cdot (T_{tank} - T_{amb})$$

This equation mirrors the WHAM equation, with the second term in the square brackets removing addition of standby loss while the burner is operating. This step avoids double counting standby loss, as it is already incorporated in the thermal efficiency metric while the burner is operating. The equation can be rewritten as:

$$Q = \frac{A}{E_t}\left[1 - \frac{F \cdot SL}{P}\right] + 24F \cdot SL$$

Where $A = \rho c_p V(T_{del} - T_{in})$ and $F = (T_{tank} - T_{amb})/70$.

The UEF can be determined as $Q_{del}/Q = A/Q$. Substituting the equation for Q into this ratio yields:

$$UEF_{rd} = \frac{A}{A\left[\frac{1}{E_t} + F \cdot SL\left(\frac{24}{A} - \frac{1}{E_t P}\right)\right]}$$

Further rearranging yields the following expression for UEF:

$$UEF_{rd} = \frac{1}{\left[\frac{1}{E_t} + F \cdot SL\left(G - \frac{1}{E_t P}\right)\right]}$$

Where

$G = 24/A$. Values for the coefficients F and G are presented in Table III.5.

TABLE III.5—COEFFICIENTS FOR THE PROPOSED ANALYTICAL UEF CONVERSION FACTOR FOR THE RESIDENTIAL-DUTY COMMERCIAL STORAGE WATER HEATERS

Draw pattern	F	G
Very Small	0.821429	0.0043520
Low	0.821429	0.0011450
Medium	0.821429	0.0007914
High	0.821429	0.0005181

iv. Residential-Duty Commercial Electric Instantaneous Water Heaters

For the UEF conversion, DOE tentatively concluded that given the similarities between consumer electric instantaneous water heaters and residential-duty commercial electric instantaneous water heaters, the principles used to derive the consumer electric instantaneous analytical conversion apply to the residential-duty commercial equipment class as well. Therefore, DOE is proposing to use the consumer electric instantaneous mathematical conversion as a starting point for developing the residential-duty electric instantaneous conversion, with the assumption that thermal efficiency is approximately equal to recovery efficiency. Using this assumption, DOE modified the consumer electric instantaneous analytical equation to the form found below, where E_t is thermal efficiency and A is coefficient found in Table III.4. DOE proposes to use this equation as the mathematical conversion factor for residential-duty commercial electric instantaneous water heaters.

$$UEF_{rd\,model} = \frac{E_t}{1 + AE_t}$$

5. Empirical Regression Approach

As noted, the empirical regression approach does not necessarily assume any prior knowledge of water heater performance, so DOE sought an approach that would allow it to consider many factors as part of its regression equations, but would systematically eliminate any that were not shown to have a substantive impact on the resulting performance metrics. DOE selected a step regression method to accomplish this goal. The step regression method examines a series of linear equations that relate the new delivery capacity and UEF to a set of observed independent variables, such as storage volume, input rate, EF test procedure delivery capacity, recovery efficiency, energy factor, thermal efficiency, or standby loss. The step regression method systematically recombines the set of independent variables to produce an equation for each possible set. Each set's equation is compared to the others, and the equation with the best fit to the actual data is chosen.

This approach eliminates factors that are not significant in converting from the EF, TE, and SL metrics to the UEF metrics, but could yield a "best" fit that might be more complicated than a simpler equation with a marginally worse level of match to experimental data. In addition to making the conversion equations more prone to error in implementation, a complicated equation may also include factors that would not be applicable to the entire population of water heaters. DOE, therefore, also considered simpler regression forms to reduce confusion in converting from old metrics to new metrics and to ensure that the regressions were applicable over the broad range of water heaters available on the market. In these circumstances, DOE examined the differences between measured values and predicted values from the correction equations. When those differences were comparable for two different models, DOE opted for the simpler of the two, so long as it captured what would be expected to be the major phenomena that would affect the new metrics. The regression tool found in the Analysis ToolPak of Microsoft Excel (2010) was used to calculate the equation for each set of independent variables.

In the April 2015 NOPR, DOE noted that it was not aware of an analytical method for determining the first-hour rating, and proposed to use an empirical regression methodology which DOE believed would be more accurate than attempting to develop an analytical method. 80 FR 20116, 20125–28 (April 14, 2015). As noted previously in section III.C.2, DOE did not receive any comments suggesting an alternate methodology for determining first-hour rating, and, thus, DOE is proposing conversion factors for those metrics and product types based on the use of the empirical regression methodology. In addition, for heat pump water heaters, DOE found that the conversion equations resulting from the analytical method and hybrid regressed-analytical approach had higher RMSD values than those resulting from the empirical regression approach (see section III.E.2.a.ii). Therefore, as proposed in the April 2015 NOPR, DOE is proposing a mathematical conversion for heat pump water heaters based on the empirical regression approach. *Id.* at 20132. (However, as discussed in section III.E.2.a.ii, this approach was modified based on comments received from interested parties.)

D. Testing Conducted for the Mathematical Conversion

This section provides an overview of the consumer and residential-duty commercial water heater markets and the test data that were available to DOE when developing the NOPR and SNOPR conversion factors.

As discussed in the April 2015 NOPR, many stakeholders commented on the importance of using actual test data in the derivation of the mathematical conversion factor. 80 FR 20116, 20121 (April 14, 2015). DOE used actual test data as part of the basis for the conversion factors and to validate the results. The models selected for testing in the April 2015 NOPR were chosen based on their characteristics being generally reflective of the broader market. In response to the April 2015 NOPR, DOE received comments suggesting areas of the market that were not adequately tested. These comments, along with DOE's responses, are discussed in detail later in this section.

For consumer and residential-duty commercial water heaters, DOE used the Compliance Certification Management System (CCMS) and crosschecked it with the AHRI directory[8] to determine the characteristics of models available on the market. DOE conducted additional research into manufacturers' literature to identify characteristics related to the water heater performance, such as the input capacity (for models not listed in the AHRI directory), venting options, tank configuration (short or tall), NO_X emissions level, ignition type (standing or non-standing pilot), and whether the model is certified for use in mobile homes. DOE also used the first-hour ratings based on the EF test procedure to attempt to predict the draw pattern that would result from the UEF test, and considered the probable draw pattern when selecting models for testing.[9] However, upon testing the models according to the UEF test method, the predicted draw pattern bin and the actual draw pattern bin did not always match up, and therefore, the actual number of models tested to each draw pattern was different than originally predicted. DOE attempted to test water heaters representative of the categories listed above, from various manufacturers, and to a similar percentage of the market across these categories (*e.g.*, DOE attempted to test approximately 8 percent of both the short and tall water heater markets, resulting in more tall units being tested due to the tall market being larger). Table III.6 shows the consumer water heater market distribution by product class, and by various attributes that commenters suggested DOE should examine. Table III.6 also shows the predicted and actual number of tested water heaters, where the predicted draw pattern of the model selected may have differed from the actual draw pattern that was used once testing was performed. Table III.7 through Table III.12 show the consumer market distribution by rated storage volume and input rate for various water heater types, along with the number of units tested for the April 2015 NOPR in each category. Table III.13 shows the market distribution for consumer heat pump water heaters by rated storage volume and EF, along with the number of units tested for the April 2015 NOPR in each category. Table III.14 and Table III.15 show the residential-duty commercial water heater market distribution by input rate and rated storage volume and the number of units tested for the April 2015 NOPR for gas-fired and oil-fired water heaters, respectively. The numbers provided below for the market and test distribution are for unique basic models, as opposed to individual model numbers, due to the addition of AHRI aggregated test data discussed further in this section. As discussed in detail immediately below, the following tables show the number of models tested for the NOPR. After the NOPR tables, are tables containing the additional number of models that DOE used for this SNOPR.

---

[8] The numbers presented in the following tables are from the CCMS directory as of September 2015 and the AHRI directory as of July 2015.

[9] As compared to the EF test procedure that relies on a single draw pattern, the UEF test procedure employs one of four patterns, the choice of which is determined based on the result of the first-hour rating test (for storage water heaters) or the maximum GPM rating test (for instantaneous water heaters).

TABLE III.6—CONSUMER WATER HEATER TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY PRODUCT TYPE AND WATER HEATER ATTRIBUTE *

Water heater type **	G–S	O–S †	E–S ††	HP–S	T–S	G–I	E–I
Total Units	21/340	2/7	9/105	5/26	2/5	17/139	5/67
Venting Options:							
Atmospheric	14/240	0/7	—	—	—	—	—
Power	7/99	—	—	—	—	17/139	—
Short or Tall:							
Short	7/94	—	2/39	—	—	—	—
Tall	14/188	2/7	7/42	—	—	—	—
NO$_X$ Emissions:							
Standard	2/70	—	—	—	—	—	—
Low	16/199	—	—	—	—	6/33	—
Ultra-Low	3/71	—	—	—	—	11/103	—
Ignition:							
Standing Pilot	11/239	—	—	—	—	—	—
No Standing Pilot	10/100	2/7	—	—	—	12/103	—
Mobile Home Certified:							
No	21/326	2/7	9/99	5/26	2/5	16/138	5/67
Yes	0/14	—	0/6	—	—	1/1	—
Draw Pattern: †††							
Very Small	—	—	—	—	—	—	5/5/67
Low	1/0/7	—	1/3/46	0/1/1	2/2/4	1/2/2	—
Medium	10/8/161	—	7/6/54	2/3/13	0/0/1	7/8/56	—
High	10/13/172	1/2/7	0/0/5	1/1/12	—	7/7/81	—

* The information in this table is presented as the actual number of tested units/the number of models available on the market. In the draw pattern rows, the first number is the number of tested units that DOE predicted would be in each draw pattern when that unit was selected based on the unit's EF test procedure delivery capacity; the second number is the actual number of tested units in each draw pattern; and the third number is the number of models available on the market. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

** Each water heater type is abbreviated using a two part designation: For the first letter(s), "G" means gas-fired, "O" means oil-fired, "E" means electric, "HP" means heat pump, and "T" means tabletop, and for the second letter "S" means storage and "I" means instantaneous.

† Two oil-fired storage water heaters were tested, but only one is compliant with the current energy conservation standards.

†† This category includes only electric storage water heaters that use electric resistance elements, and does not include electric heat pump water heaters.

††† First-hour ratings from the EF test procedure were used to estimate draw patterns.

TABLE III.7—CONSUMER GAS-FIRED STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)								
	20	28	29	30	38	40	48	50	55
30	—	0/1 (0%)	—	0/9 (0%)	—	0/4 (0%)	—	—	—
32	—	—	1/4 (25%)	0/4 (0%)	—	0/3 (0%)	—	—	—
33	—	—	—	0/1 (0%)	—	—	—	—	—
34	—	—	—	—	—	0/7 (0%)	—	—	—
35	—	—	—	0/12 (0%)	—	0/1 (0%)	—	—	—
35.5	—	—	—	0/6 (0%)	—	0/2 (0%)	—	—	—
36	—	—	—	—	0/1 (0%)	1/10 (10%)	—	1/11 (9%)	—
37	—	—	—	—	—	0/1 (0%)	—	—	—
38	—	—	—	—	0/1 (0%)	1/17 (6%)	0/1 (0%)	0/9 (0%)	—
40	—	—	—	—	0/3 (0%)	9/85 (11%)	1/4 (25%)	1/71 (1%)	—
42	—	—	—	—	—	0/5 (0%)	—	0/8 (0%)	—
45	—	—	—	—	—	—	0/1 (0%)	1/3 (33%)	0/2 (0%)
47	—	—	—	—	—	—	—	1/3 (33%)	—
48	—	—	—	—	—	—	0/1 (0%)	—	—
50	—	—	—	—	—	0/2 (0%)	0/1 (0%)	1/8 (13%)	0/2 (0%)
55	—	—	—	—	—	—	0/1 (0%)	—	—
56	—	—	—	—	—	—	0/2 (0%)	—	—
58	—	—	—	—	—	—	—	0/1 (0%)	—
60	—	—	1/1 (100%)	—	—	—	0/5 (0%)	0/9 (0%)	0/2 (0%)
62	—	—	—	—	—	—	—	0/6 (0%)	—
65	—	—	—	—	—	—	0/5 (0%)	1/3 (33%)	—
75	0/1 (0%)	—	—	—	—	—	—	—	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

TABLE III.8—CONSUMER ELECTRIC STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Rated storage volume (gallons)	All input rates
28	0/6 (0%)
30	1/27 (4%)
36	0/1 (0%)
38	0/6 (0%)
40	4/29 (14%)
47	0/2 (0%)
50	3/26 (12%)
52	0/2 (0%)
55	1/6 (17%)

*The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.9—CONSUMER GAS-FIRED INSTANTANEOUS TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	All rated storage volumes
120	1/11 (9%)
130	0/2 (0%)
140	2/9 (22%)
145	0/1 (0%)
150	1/13 (8%)
152	1/1 (100%)
157	0/7 (0%)
160	0/6 (0%)
175	1/2 (50%)
180	3/30 (10%)
190	1/9 (11%)
192	0/1 (0%)
195	0/1 (0%)
199	1/27 (4%)
199.9	2/6 (33%)
200	2/13 (15%)

*The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.10—CONSUMER ELECTRIC INSTANTANEOUS TEST DATA USED FOR THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kW)	All rated storage volumes
2.4	1/2 (50%)
3	0/6 (0%)
3.4	0/1 (0%)
3.5	0/9 (0%)
4.1	0/3 (0%)
4.8	0/5 (0%)
5.5	0/2 (0%)
6	1/4 (25%)
6.5	0/5 (0%)
7.2	0/1 (0%)
7.5	0/3 (0%)
8	1/3 (33%)
8.3	0/3 (0%)
9	0/3 (0%)
9.5	1/6 (17%)
10	1/4 (25%)
11	0/2 (0%)
11.5	0/3 (0%)
12	0/2 (0%)

*The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.11—CONSUMER TABLETOP STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Rated storage volume (gallons)	All input rates
27	1/2 (50%)
38	1/1 (100%)
40	0/2 (0%)

*The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.12—CONSUMER OIL-FIRED STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)		
	30	32	50
90	—	0/2 (0%)	—
104	—	1/2 (50%)	—
105	0/2 (0%)	—	0/1 (0%)

*The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.13—CONSUMER HEAT PUMP DISTRIBUTION USED FOR THE NOPR BY ENERGY FACTOR AND RATED STORAGE VOLUME *

Energy factor	Rated storage volume (gallons)							
	45	50	58	65	66	72	80	119
2.2	—	1/1 (100%)	—	—	—	—	—	—
2.21	—	—	—	—	—	—	—	0/1 (0%)
2.31	—	—	—	0/1 (0%)	—	—	0/1 (0%)	—
2.32	—	0/1 (0%)	—	—	—	—	—	—
2.33	—	—	—	—	—	—	1/1 (100%)	—
2.4	—	0/1 (0%)	—	—	—	—	—	—

TABLE III.13—CONSUMER HEAT PUMP DISTRIBUTION USED FOR THE NOPR BY ENERGY FACTOR AND RATED STORAGE VOLUME *—Continued

Energy factor	Rated storage volume (gallons)							
	45	50	58	65	66	72	80	119
2.45	0/1 (0%)	1/2 (50%)	—	—	—	0/1 (0%)	0/1 (0%)	—
2.5	—	—	—	—	0/1 (0%)	—	0/1 (0%)	—
2.72	—	—	—	—	—	—	0/1 (0%)	—
2.74	—	—	—	—	0/1 (0%)	—	—	—
2.75	—	0/1 (0%)	—	—	—	—	—	—
2.9	—	0/1 (0%)	—	—	—	—	0/1 (0%)	—
3.05	—	—	0/1 (0%)	—	—	—	—	—
3.07	—	—	—	—	—	—	0/1 (0%)	—
3.1	—	0/1 (0%)	—	—	—	—	0/1 (0%)	—
3.17	—	—	—	—	0/1 (0%)	—	—	—
3.24	—	0/1 (0%)	—	—	—	—	—	—
3.39	—	—	—	—	—	—	0/1 (0%)	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

TABLE III.14—RESIDENTIAL-DUTY COMMERCIAL GAS-FIRED STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *,**

Input rate (kBtu/h)	Rated storage volume (gallons)										
	34	40	50	55	60	74	75	80	98	100	119
75	—	—	—	—	—	—	0/1 (0%)	—	—	—	—
75.1	—	—	—	—	—	0/3 (0%)	0/3 (0%)	—	0/2 (0%)	0/1 (0%)	—
76	—	—	2/4 (50%)	—	0/2 (0%)	—	2/21 (10%)	0/2 (0%)	—	0/3 (0%)	—
78	—	—	—	0/1 (0%)	—	—	—	—	—	—	—
80	—	—	—	0/2 (0%)	—	0/1 (0%)	0/1 (0%)	—	—	1/1 (100%)	—
85	—	—	—	—	—	—	—	—	—	0/3 (0%)	—
88	—	—	—	—	—	—	—	—	—	0/3 (0%)	—
90	—	—	—	—	—	—	—	—	0/1 (0%)	—	—
91.3	—	0/1 (0%)	—	—	—	—	—	—	—	—	—
98	—	—	0/2 (0%)	—	—	—	—	—	—	—	—
100	0/1 (0%)	—	0/1 (0%)	0/3 (0%)	—	—	0/2 (0%)	0/2 (0%)	—	—	0/2 (0%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

** Seven data points were presented in the April 2015 NOPR, but two units were of the same basic model, and three units were tested to the incorrect input rate. DOE has removed these data points from the analysis.

TABLE III.15—RESIDENTIAL-DUTY COMMERCIAL OIL-FIRED STORAGE TEST DATA USED IN THE NOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *,**

Input rate (kBtu/h)	Rated storage volume (gallons)		
	30	50	70
119	0/2 (0%)	0/1 (0%)	0/1 (0%)
140	—	0/1 (0%)	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

In addition, AHRI submitted test results for testing conducted under both the EF and UEF test methods by its member manufacturers. (AHRI, No. 9) As using additional data points will generally reduce the uncertainty in the statistical modeling used to generate the conversion factor, DOE has incorporated the test data submitted by AHRI in its analysis for this SNOPR. DOE also conducted additional testing, which was completed after the publication of the April 2015 NOPR, and is including the results in this SNOPR. Table III.16 shows the consumer market distribution by product class and attributes that commenters suggested DOE examine, along with the number of units tested for the development of this SNOPR in each category. Table III.17 through Table III.21 show the consumer market distribution by rated storage volume and input rate for various water heater categories and the number of units tested for this SNOPR in each category. Table III.22 shows the consumer heat pump market distribution by rated storage volume and EF and the number of units tested for this SNOPR in each category. Table III.23 and Table III.24 show the residential-duty commercial market distribution by input rate and rated storage volume and the number of units tested for this SNOPR in each category. AHRI did not supply model numbers in its data, so some percentages in the tables below are greater than 100 percent, suggesting that DOE and AHRI have data on the same water heaters. Both the DOE and AHRI data sets contain some test points that are from different water heaters of the same model. These models were only counted once in the tables below, and the test data were averaged into a single data point in the conversion factor derivation.

TABLE III.16—CONSUMER MARKET DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY PRODUCT TYPE AND WATER HEATER ATTRIBUTE*

Water heater type **	G–S	O–S †	E–S ††	HP–S	T–S	G–I	E–I
Total Units	118/340	2/7	46/105	16/26	3/5	53/139	5/67
Venting Options							
Atmospheric	84/240	0/7	—	—	—	—	—
Power	33/99	—	—	—	—	53/139	—
Short or Tall							
Short	42/94	—	11/39	—	—	—	—
Tall	75/188	2/7	19/42	—	—	—	—
NO_X Emissions							
Standard	13/70	—	—	—	—	—	—
Low	81/199	—	—	—	—	9/33	—
Ultra-Low	24/71	—	—	—	—	44/103	—
Ignition							
Standing Pilot	76/239	—	—	—	—	—	
No Standing Pilot	41/100	2/7	—	—	—	48/103	—
Mobile Home Certified							
No	118/326	2/7	46/99	16/26	3/5	52/138	5/67
Yes	0/14	—	0/6	—	—	1/1	—
Draw Pattern †††							
Very Small	—	—	—	—	—	—	5/5/67
Low	4/2/7	—	12/13/46	0/1/1	3/2/4	1/2/2	—
Medium	55/55/161	—	31/32/54	7/9/13	0/1/1	13/21/56	—
High	59/61/172	1/2/7	4/1/5	6/6/12	—	18/30/81	—

* The information in this table is presented as the actual number of tested units/the number of models available on the market. In the draw pattern rows, the first number is the number of tested units that DOE predicted would be in each draw pattern when that unit was selected based on the unit's EF test procedure delivery capacity; the second number is the actual number of tested units in each draw pattern; and the third number is the number of models available on the market. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

** Each water heater type is abbreviated using a two part designation: For the first letter(s) "G" means gas-fired, "O" means oil-fired, "E" means electric, "HP" means heat pump, and "T" means tabletop, and for the second letter "S" means storage and "I" means instantaneous.

† Two oil-fired storage water heaters were tested, but only one is compliant with the current energy conservation standards.

†† In this table, this category includes only electric storage water heaters that use electric resistance elements, and does not include electric heat pump water heaters.

†† First-hour ratings from the EF test procedure were used to estimate draw patterns.

TABLE III.17—CONSUMER GAS-FIRED STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)								
	20	28	29	30	38	40	48	50	55
30	—	1/1 (100%)	—	6/9 (67%)	—	1/4 (25%)	—	—	—
32	—	—	2/4 (50%)	3/4 (75%)	—	0/3 (0%)	—	—	—
33	—	—	—	1/1 (100%)	—	—	—	—	—
34	—	—	—	—	—	3/7 (43%)	—	—	—
35	—	—	—	0/12 (0%)	—	0/1 (0%)	—	—	—
35.5	—	—	—	2/6 (33%)	—	0/2 (0%)	—	—	—
36	—	—	—	—	1/1 (100%)	4/10 (40%)	—	3/11 (27%)	—
37	—	—	—	—	—	0/1 (0%)	—	—	—
38	—	—	—	—	0/1 (0%)	8/17 (47%)	0/1 (0%)	5/9 (56%)	—
40	—	—	—	—	1/3 (33%)	29/85 (34%)	3/4 (75%)	24/71 (34%)	—
42	—	—	—	—	—	0/5 (0%)	—	3/8 (38%)	—
45	—	—	—	—	—	—	0/1 (0%)	2/3 (67%)	1/2 (50%)
47	—	—	—	—	—	—	—	1/3 (33%)	—
48	—	—	—	—	—	—	0/1 (0%)	—	—
50	—	—	—	—	—	0/2 (0%)	1/1 (100%)	3/8 (38%)	1/2 (50%)
55	—	—	—	—	—	—	0/1 (0%)	—	—
56	—	—	—	—	—	—	0/2 (0%)	—	—
58	—	—	—	—	—	—	—	0/1 (0%)	—

TABLE III.17—CONSUMER GAS-FIRED STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *—Continued

Input rate (kBtu/h)	Rated storage volume (gallons)								
	20	28	29	30	38	40	48	50	55
60	—	—	2/1 (200%)	—	—	—	1/5 (20%)	0/9 (0%)	0/2 (0%)
62	—	—	—	—	—	—	—	1/6 (17%)	—
65	—	—	—	—	—	—	2/5 (40%)	2/3 (67%)	—
75	0/1 (0%)	—	—	—	—	—	—	—	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

TABLE III.18—CONSUMER ELECTRIC STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *

Rated storage volume (gallons)	All input rates
28	5/6 (83%)
30	6/27 (22%)
36	0/1 (0%)
38	2/6 (33%)
40	12/29 (41%)
47	0/2 (0%)
50	15/26 (58%)
52	1/2 (50%)
55	4/6 (67%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.19—CONSUMER GAS-FIRED STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	All rated storage volumes
120	4/11 (36%)
130	0/2 (0%)
140	5/9 (56%)
145	0/1 (0%)
150	4/13 (31%)
152	3/1 (300%)
157	2/7 (29%)
160	0/6 (0%)
175	1/2 (50%)
180	9/30 (30%)
190	5/9 (56%)
192	0/1 (0%)
195	0/1 (0%)
199	6/27 (22%)
199.9	10/6 (167%)
200	2/13 (15%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.20—CONSUMER TABLETOP STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *

Rated storage volume (gallons)	All input rates
27	1/2 (50%)
38	1/1 (100%)
40	1/2 (50%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.21—CONSUMER OIL-FIRED STORAGE DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)		
	30	32	50
90		0/2 (0%)	
104		1/2 (50%)	
105	0/2 (0%)		0/1 (0%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses next to the counts of units tested and models.

TABLE III.22—CONSUMER HEAT PUMP DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY ENERGY FACTOR AND RATED STORAGE VOLUME *

Energy factor	Rated storage volume (gallons)							
	45	50	58	65	66	72	80	119
2.2	—	1/1 (100%)	—	—	—	—	—	—
2.21	—	—	—	—	—	—	—	1/1 (100%)
2.31	—	—	—	1/1 (100%)	—	—	1/1 (100%)	—
2.32	—	0/1 (0%)	—	—	—	—	—	—
2.33	—	—	—	—	—	—	2/1 (200%)	—

TABLE III.22—CONSUMER HEAT PUMP DISTRIBUTION AND TEST DATA USED FOR THIS SNOPR BY ENERGY FACTOR AND RATED STORAGE VOLUME *—Continued

Energy factor	Rated storage volume (gallons)							
	45	50	58	65	66	72	80	119
2.4	—	2/1 (200%)	—	—	—	—	—	—
2.45	0/1 (0%)	1/2 (50%)	—	—	—	0/1 (0%)	0/1 (0%)	—
2.5	—	—	—	—	0/1 (0%)	—	0/1 (0%)	—
2.72	—	—	—	—	—	—	1/1 (100%)	—
2.74	—	—	—	—	0/1 (0%)	—	—	—
2.75	—	0/1 (0%)	—	—	—	—	—	—
2.9	—	1/1 (100%)	—	—	—	—	1/1 (100%)	—
3.05	—	—	0/1 (0%)	—	—	—	—	—
3.07	—	—	—	—	—	—	0/1 (0%)	—
3.1	—	0/1 (0%)	—	—	—	—	1/1 (100%)	—
3.17	—	—	—	—	0/1 (0%)	—	—	—
3.24	—	0/1 (0%)	—	—	—	—	—	—
3.39	—	1/0 **	—	—	—	—	0/1 (0%)	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

** AHRI supplied data for this model which is not contained in the version of the CCMS and AHRI databases used for this SNOPR. Due to the high rated EF, DOE believes this unit to have recently come on to the market.

TABLE III.23—RESIDENTIAL-DUTY COMMERCIAL GAS-FIRED STORAGE TEST DATA USED FOR THIS SNOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)										
	34	40	50	55	60	74	75	80	98	100	119
75	—	—	—	—	—	—	0/1 (0%)	—	—	—	—
75.1	—	—	—	—	—	2/3 (67%)	1/3 (33%)	—	3/2 (150%)	0/1 (0%)	—
76	—	—	6/4 (150%)	—	0/2 (0%)	—	2/21 (10%)	0/2 (0%)	—	0/3 (0%)	—
78	—	—	—	0/1 (0%)	—	—	—	—	—	—	—
80	—	—	—	0/2 (0%)	—	0/1 (0%)	1/1 (100%)	—	—	1/1 (100%)	—
85	—	—	—	—	—	—	—	—	—	1/3 (33%)	—
88	—	—	—	—	—	—	—	—	—	0/3 (0%)	—
90	—	—	—	—	—	—	—	—	0/1 (0%)	—	—
91.3	—	0/1 (0%)	—	—	—	—	—	—	—	—	—
98	—	—	0/2 (0%)	—	—	—	—	—	—	—	—
100	0/1 (0%)	—	1/1 (100%)	0/3 (0%)	—	—	1/2 (50%)	0/2 (0%)	—	—	0/2 (0%)

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

TABLE III.24—RESIDENTIAL-DUTY COMMERCIAL OIL-FIRED STORAGE TEST DATA USED FOR THIS SNOPR AND MARKET DISTRIBUTION BY INPUT RATE AND RATED STORAGE VOLUME *

Input rate (kBtu/h)	Rated storage volume (gallons)		
	30	50	70
119	0/2 (0%)	0/1 (0%)	0/1 (0%)
140	—	1/1 (100%)	—

* The information in this table is presented as the number of tested units/the number of models available on the market. The percentage of models tested is in parentheses below the counts of units tested and models. A "—" indicates that there are no models available in the category, and, thus, there were no units tested.

As noted above, DOE received a number of comments suggesting types of water heaters for which the commenters said DOE should incorporate additional data for the development of the conversion factors. Specifically, AHRI and Rheem stated that more short units should be tested and in particular, electric short units. (AHRI, No. 13 at p. 5; Rheem, No. 11 at p. 7) For the SNOPR, the percentage of gas-fired and electric short water heater models on the market that have been tested has increased from 7 percent to 45 percent and from 5 percent to 28 percent, respectively, as compared to the April 2015 NOPR. DOE notes that these percentages are based on identification in manufacturer literature, as there is no consistent, objective criteria for identifying short and tall models across manufacturers. DOE believes that the models tested are representative of "short" models available on the market.

AHRI stated that units subject to the low draw pattern for the consumer electric storage category were not adequately tested. (AHRI, No. 13 at p. 5) Rheem also stated that not enough consumer electric storage units were tested, but that more testing for the high-draw-pattern category was needed. (Rheem, No. 13 at p. 7) As noted above, the draw pattern classification for DOE's test unit selection was based upon the first-hour ratings based on the EF test procedure, as the first-hour ratings under the UEF test procedure are not readily available in published literature. However, the actual draw pattern for each unit tested was found experimentally through testing for the first-hour rating under the UEF test method prior to conducting the UEF simulated-use test. For the SNOPR, the percentage of electric low- and high-draw-pattern water heaters on the market that have been tested has increased from 7 percent to 28 percent and from 0 percent to 20 percent, respectively. These percentages are based on the number of units that were determined through testing to be in a draw pattern bin as compared to the number of models that would be predicted to be in that draw pattern bin.

Rheem stated that no low-draw-pattern consumer gas-fired water heaters were tested. (Rheem, No. 13 at p. 7) DOE predicted seven of the 340 (*i.e.*, 2.1 percent) gas-fired water heater models on the market to be in the low-draw-pattern bin based on their EF test procedure first-hour rating. For the NOPR, one unit was tested with an expected low-draw-pattern based on its first-hour rating under the EF test procedure, but that unit's tested first-hour rating under the new UEF procedure placed it into the medium-draw-pattern bin. Subsequently, two consumer gas-fired water heaters were supplied in the AHRI dataset and tested to the low-draw-pattern bin under the UEF first-hour rating test. Therefore, two low-draw-pattern tests are now available and were included in the analysis.

Rheem stated that there were no tests of consumer gas-fired storage water heaters above 55 gallons. (Rheem, No. 13 at p. 7) In response, DOE notes that as of the time of this analysis, there are no water heaters on the market which would fall into this category.

AHRI and Rheem suggested that more ultra-low NO_X units should be tested. (AHRI, No. 13 at p. 5; Rheem, No. 11 at p. 7) For the SNOPR, the percentage of ultra-low NO_X gas-fired water heaters on the market that have been tested has increased from 4 percent to 34 percent.

AHRI, GE, and Rheem suggested that more high-EF heat pump units should be tested. (AHRI, No. 8 at p. 4; GE, No. 12 at p. 1; Rheem, No. 11 at p. 7) For the SNOPR, the percentage of high-EF (*i.e.*, EF greater than 2.7) heat pump water heaters on the market that have been tested has increased from 0 percent to 42 percent.

AHRI and Rheem commented that the sample size for the residential-duty gas-fired storage category was too small. (AHRI, No. 13 at p. 6; Rheem, No. 11 at p. 7) AHRI and Rheem also stated that no residential-duty units in the high-input range were tested. (AHRI, No. 8 at p. 4; Rheem, No. 11 at p. 7) For the SNOPR, the percentage of residential-duty commercial gas-fired storage water heaters on the market that have been tested has increased from 7 percent to 28 percent, and the percentage of high-input (*i.e.*, input rate greater than 90,000 Btu/h) units has increased from 0 percent to 14 percent.

1. Repeatability

In response to the April 2015 NOPR, commenters stated that the repeatability of the UEF test procedure was not analyzed. (AHRI, No. 8 at p. 5; Rheem, No. 11 at p. 6) In response, DOE acknowledges that each water heater was tested once, and repeat tests of the same unit were not conducted by DOE. During its test procedure rulemaking to establish the UEF test method, stakeholders did not raise concerns regarding repeatability, and, therefore, DOE did not specifically evaluate this issue during testing conducted for the NOPR. However, AHRI submitted data that appears to show the variations in the experimental results from testing a given unit are unlikely to contribute more than a *de minimis* amount of uncertainty to the overall regression. One consumer electric storage water heater (Test ID No. 1–61 and 1–62) and one consumer gas-fired instantaneous water heater (Test ID No. 1–83 and 1–84) were tested multiple times. For the consumer electric storage water heater, the only difference between the two tests was the result of the EF test procedure's first-hour rating test (difference of 3 gallons). For the gas-fired instantaneous water heater, the differences in the EF test procedure maximum GPM, EF, UEF test procedure maximum GPM, and UEF results were 0.019 gpm, 0.0017, 0.0002 gpm, and 0.0012, respectively. (AHRI, No. 9 Attachment) These data suggest that the EF and UEF test procedures are repeatable.

For this SNOPR, DOE conducted additional testing that allowed DOE to further examine the repeatability of the test method. DOE tested eight units, two different units of one model and 3 different units of 2 other models. Because the different units may have slightly different EF or UEF characteristics, the variability in these results is an upper bound for the variability introduced by the test methods themselves. The variability was similar for all three, and DOE has no reason to think the test methods would produce significantly different levels of variability for other types of water heaters. The results of the testing are shown in Table III.25. The standard deviations of the EF and UEF tests for models 1, 2, and 3 are 0.0018 and 0.0035, 0.0033 and 0.0044, and 0.0149 and 0.0116, respectively. These standard deviations are all within the same magnitude for each model and for the case of model 3 the UEF standard deviation is less than EF. The results indicate a reasonable level of repeatability in the test procedure.

TABLE III.25—RESULTS FOR REPEATABILITY TESTING FOR EF AND UEF TEST METHODS

Model	Unit	Rated EF	Tested EF	Tested UEF
1	1	0.95	0.947	.949
1	2	0.95	0.949	.944
2	1	0.95	0.937	.903
2	2	0.95	0.940	.909
2	3	0.95	0.934	.901
3	1	0.95	0.908	.914
3	2	0.95	0.932	.898
3	3	0.95	0.905	.892

E. Testing Results and Analysis of Test Data

1. Impact of Certain Water Heater Attributes on Efficiency Ratings

After conducting testing on all of the selected water heaters according to both the prior test procedures and the uniform efficiency descriptor test procedure, DOE examined how particular attributes of water heaters might affect the conversion factors and investigated the approaches discussed in section III.C for obtaining conversion factors. The goal of this analysis was to determine whether or not particular attributes would warrant separate conversion equations. DOE investigated attributes such as: (1) NO_X emission level; (2) short or tall configuration; (3) vent type; (4) standing pilot versus electronic ignition; (5) whether condensing or heat pump technology is used; and (6) whether the unit is tabletop. The RMSD between the measured values and the values obtained through various conversion methods was compared. The conversion approach with the lowest cumulative RMSD value for a particular fuel type was considered to be the best candidate for the conversion equation.

In the April 2015 NOPR, DOE proposed to adopt different conversion equations based on the level of NO_X emissions. 80 FR 20116, 20129–30 (April 14, 2015). The three levels of NO_X emissions currently available in water heaters on the market include standard (greater than or equal to 40 nanograms per joule (ng/J)), low (less than 40 ng/J and greater than or equal to 10 ng/J for storage water heaters, and less than 40 ng/J and greater than or equal to 14 ng/J for instantaneous water heaters), and ultra-low (less than 10 ng/J for storage water heaters and less than 14 ng/J for instantaneous water heaters). AHRI commented that separate conversions for standard and low-NO_X water heaters are not needed. (AHRI, No. 8 at p. 4) As a result, DOE re-examined the data to determine the variability of the conversions when considering standard and low-NO_X water heaters together, and separately from ultra-low-NO_X water heaters. DOE found that the combined approach recommended by AHRI slightly reduces the variability of the conversion equations, and, thus, the Department has included standard and low-NO_X water heaters in a single set of conversion equations in this supplemental proposal. The proposal continues to treat ultra-low-NO_X water heaters separately, because an ultra-low-NO_X burner has a fundamentally different design than standard and low-NO_X burners and the resulting RMSD values are lower for each category when separated.

Most units that are short or tall have been labeled as such by the manufacturer; however, some units do not have this designation. DOE has found that some units labeled as "short" are actually taller than units labeled as "tall." In the NOPR, DOE requested comment on how manufacturers determine whether a unit is short or tall. 80 FR 20116, 20129 (April 14, 2015). No response was received related to this inquiry, so DOE considered manufacturer literature in determining whether a model was "tall" or "short," although as noted, the criteria for classification was not always consistent across manufacturers. DOE examined separate conversions for tall and short water heaters based on their identification in manufacturer literature; however, DOE ultimately did not propose separate conversions because it did not yield materially different results and is not based on discrete design characteristics that are consistent across all manufacturers.

As explained in the April 2015 NOPR, the four venting configurations currently available in water heaters on the market include atmospheric, direct, power, and power-direct. Atmospheric and power vent units intake air from the area surrounding the water heater, while direct and power-direct vents intake air from outdoors. Atmospheric and direct vent units use natural convection to circulate combustion air, while power and power-direct vents use some additional method to force circulation of combustion air. Concentric inlet and outlet piping is a configuration that can be used in directly venting water heaters to preheat incoming air using exhaust gas. For these tests, concentric inlet and outlet piping was not used; inlet air for the direct and power-direct vent units was delivered to the water heater in separate pipes from that used for exhaust. As these tests were conducted under identical controlled conditions, DOE determined that there is very little difference, in terms of the comparison between EF and UEF, between atmospheric and direct vent water heaters and also between power and power-direct vent. For these reasons DOE grouped atmospheric and direct into the atmospheric configuration and power and power-direct into the power configuration. Similarly, DOE determined that there was not a significant difference between electronic ignition and standing pilot units and grouped those together for this conversion. 80 FR 20116, 20129–30 (April 14, 2015).

Rheem commented that DOE should test ultra-low-NO_X consumer gas-fired storage water heaters that use a power vent to determine whether a different UEF conversion factor is warranted to differentiate between the different vent types of ultra-low-NO_X water heaters. (Rheem, No. 11 at p. 7) AHRI submitted test data for 17 ultra-low-NO_X consumer gas-fired water heaters: 9 that are atmospherically vented and 8 that are power vented. DOE analyzed separating the ultra-low-NO_X consumer gas-fired storage category into atmospherically vented and power vented categories, and found that the RMSD value decreased by less than 0.001 when separated. DOE tentatively considers a change in RMSD to be negligible if it is less than one unit (0.01 for EF and UEF, 0.1 for maximum GPM, and 1.0 for first-hour rating). DOE has tentatively decided that this decrease is not significant enough to justify a separate conversion, given the additional complexity of separating these products by vent type.

In the April 2015 NOPR, DOE tentatively concluded that tabletop units were not significantly different from electric resistance storage water heaters and considered them together for the purposes of developing the mathematical conversion. 80 FR 20116, 20132 (April 14, 2015). Upon further consideration, DOE believes that tabletop units, due to their efficiency ratings being well below those of traditional electric storage water heaters, may react differently to the UEF test procedure than traditional electric storage water heaters. Therefore, DOE has tentatively decided to propose separate conversions for tabletop and electric resistance water heaters in this SNOPR.

2. Conversion Factor Derivation

DOE used the methods described in section III.C to derive the mathematical conversion factor for the different types of water heaters covered within the scope of this rulemaking (as discussed in section III.B). This section describes the methodology that was applied to develop a conversion factor for each type of water heater.

In response to the April 2015 NOPR, Rheem commented generally that DOE did not specify how it determined whether the proposed UEF conversion factors and minimum standards were acceptable and do not effectively amend the energy conservation standards. (Rheem, No. 11 at p. 5) AHRI stated that the tested UEF values do not align with the converted UEF values. (AHRI, No. 13 at p. 4) Regarding the conversion factors, DOE examined multiple approaches and, in most cases, chose the approach that yielded the lowest RMSD value. For certain conversions, DOE chose an approach where the RMSD value was slightly higher, but negligibly so, in favor of a simpler approach to the conversion. (As stated in section III.E.1, DOE tentatively considers a change in RMSD to be negligible if it is less than one unit (0.01 for EF and UEF, 0.1 for maximum GPM, and 1.0 for first-hour rating).) In examining whether the proposed conversion factors are appropriate, DOE considered its certification policies for water heaters contained in 10 CFR part 429. Recognizing the variation in materials, the manufacturing process, and testing, DOE provides bounds on acceptable representations of efficiency for certifying represented values. DOE requires the manufacturer to rate the efficiency of a basic model between the Federal energy conservation standard and up to the lower of the mean of the sample or the 95-percent lower confidence limit divided by 0.9. 10 CFR 429.17. DOE examined the variability between the tested EF and the rated EF for each model tested for this rulemaking by determining the standard deviation for each sample grouping (*i.e.*, the sample data points included for each conversion equation) in order to estimate the amount of variation allowed by DOE's rating requirements at 10 CFR 429.17. DOE then compared the standard deviation of the tested EF values to the RMSD of predicted UEF values.[10] For all product classes, the RMSD of the UEF values was less than or equal to the standard deviation of the EF values when rounded to the nearest 0.01, indicating that the variability of the predicted conversion values is less than or equal to that of the tested EF values observed in a sample of models under the current test procedure. In addition, DOE's approach to ensuring the energy conservation standards are not effectively amended is discussed further in section III.E.3.

NEEA stated that the April 2015 NOPR did not deliver a set of mathematical conversion factors that would enable the marketplace (or anyone else) to rely on the resulting UEF ratings or the proposed UEF standards equations that are derived from those ratings. (NEEA, No. 15 at p. 2) DOE disagrees with NEEA, and believes that the UEF values predicted using the mathematical conversions are reasonable, as evidenced by the resulting RMSD values. RMSD is a measure of the differences between values predicted by a model and those actually observed. As discussed above, the RMSD values for the predicted UEF were less than or equal to the standard deviation of the tested EF values for each class of water heater, suggesting that the mathematical conversion factors presented are reasonably accurate.

a. Consumer Storage Water Heaters

i. Test Results

In total, DOE has conducted testing of 55 consumer storage water heater models using both the EF and UEF test procedures, and likewise, AHRI has supplied test data for 130 consumer storage water heater models using both the EF and UEF test procedures.[11] [12] Table III.26 presents the test data used to derive the consumer storage water heater conversion factors. Table III.27 shows the water heater attributes by unit. DOE notes that 1 of the 2 oil-fired storage water heaters, 1 of the 46 electric storage water heaters, and 3 of the 118 gas-fired storage water heaters that were included in the testing and analysis had manufacturer self-declared ratings below the current energy conservation standards (compliance required April 16, 2015). Although the rated efficiency of these water heaters are below the energy conservation standards, DOE believes it is appropriate to use data from these models, because the difference between the relevant parameters under the new and old test procedures (*i.e.*, first-hour rating, EF, and UEF) are likely to be similar to those of a model rated to meet the energy conservation standards. Thus, DOE believes this model is relevant for evaluating the conversion factor which is intended to establish the relationship between ratings under the UEF and EF test procedures. Therefore, DOE has considered these models in its analysis for determining the mathematical conversion factors.

TABLE III.26—CONSUMER STORAGE WATER HEATER TEST DATA

CS No.	AHRI No.	Type	Storage volume (gal)	Input rate (Btu/h)	Prior FHR (gal)	Updated FHR (gal)	Prior recovery efficiency (%)	EF	UEF
1	N/A	Gas	36.8	40,000	73.8	104.2	92.2	0.790	0.802
2	N/A	Gas	45.6	39,800	91.0	85.0	96.2	0.836	0.826
3	N/A	Gas	37.8	39,400	74.5	80.9	80.5	0.692	0.714
4	N/A	Gas	49.4	44,100	97.5	86.7	78.8	0.610	0.634
5	N/A	Gas	38.2	38,300	71.4	64.8	76.4	0.625	0.600
6	N/A	Gas	38.0	40,500	73.5	75.7	83.6	0.702	0.719
7	N/A	Gas	37.9	40,100	80.2	63.8	83.6	0.711	0.669
8	N/A	Gas	47.2	50,600	95.2	87.7	78.3	0.608	0.635
9	N/A	Gas	38.1	39,300	71.9	77.8	75.8	0.607	0.635
10	N/A	Gas	27.8	31,600	59.0	64.4	78.8	0.619	0.605
11	N/A	Gas	38.1	40,200	74.9	70.9	78.5	0.618	0.570
12	N/A	Gas	38.8	32,400	68.7	65.1	77.9	0.664	0.624
13	N/A	Gas	38.4	39,800	70.2	74.1	80.4	0.673	0.654
14	N/A	Gas	27.7	59,600	96.9	94.6	78.2	0.702	0.718

---

[10] DOE examined RMSD as the measure of the variability between tested and predicted UEF values, as it is a common measure of the accuracy of a model and is often used to compare predicted and measured values. In comparing measured versus rated values for EF, DOE examined standard deviation, which represents the variability of a sample in relation to the mean of that sample. In this case, DOE assumes that the rated EF will represent the mean of the sample. DOE recognizes that under its certification regulation, rated EF may actually be different from the mean of a sample. For purposes of assessing the scope of variability, that difference will not be important.

[11] The AHRI submitted data points 2–5 and 2–6 were not used in this analysis as the reported recovery efficiencies were 98 percent and not calculated from test data.

[12] If multiple tests were conducted on either the same unit or same basic model of a water heater, the results were averaged to produce the values reported in this SNOPR. In one instance within the AHRI-submitted data for consumer storage water heaters, three tests were conducted, where two tests were conducted on the same unit and another test was conducted on a unit of the same basic model. The two tests of the same unit were averaged, and this value was then averaged with the results of the test of the unit of the same basic model.

TABLE III.26—CONSUMER STORAGE WATER HEATER TEST DATA—Continued

CS No.	AHRI No.	Type	Storage volume (gal)	Input rate (Btu/h)	Prior FHR (gal)	Updated FHR (gal)	Prior recovery efficiency (%)	EF	UEF
15	N/A	Gas	38.4	36,300	66.0	68.1	85.0	0.699	0.677
16	N/A	Gas	47.9	49,900	90.2	81.1	81.1	0.674	0.676
17	N/A	Gas	47.8	64,600	108.0	108.8	79.8	0.654	0.680
18	N/A	Gas	38.4	40,000	67.0	81.1	80.5	0.601	0.628
19	N/A	Gas	37.8	39,700	70.2	87.0	80.2	0.610	0.641
20	N/A	Gas	38.1	40,300	68.3	64.8	74.1	0.602	0.598
21	N/A	Gas	28.6	33,000	56.1	70.6	82.2	0.610	0.561
22	N/A	Gas	48.1	36,000	92.1	88.2	80.6	0.630	0.662
23	N/A	Gas	47.7	40,500	94.2	84.0	72.5	0.547	0.640
24	N/A	Gas	26.5	29,500	50.4	51.5	80.8	0.644	0.603
25	N/A	Gas	45.6	39,700	87.9	83.2	77.8	0.593	0.617
26	N/A	Gas	54.1	44,800	103.2	97.9	77.2	0.577	0.596
27	N/A	Oil	30.1	104,000	112.5	127.4	89.4	0.605	0.641
28	N/A	Oil	29.8	105,100	104.8	111.6	71.4	0.518	0.528
29	N/A	Electric	25.7	15,100	41.4	39.7	98.0	0.949	0.903
30	N/A	Electric	25.8	15,400	42.9	42.9	98.0	0.936	0.891
31	N/A	Electric	35.0	15,400	55.5	52.3	98.0	0.941	0.937
32	N/A	Electric	25.1	16,300	40.8	46.2	98.0	0.944	0.902
33	N/A	Electric	36.2	15,200	53.2	50.0	98.0	0.940	0.906
34	N/A	Electric	45.1	15,300	56.5	65.3	98.0	0.930	0.909
35	N/A	Electric	46.0	14,800	66.8	59.9	98.0	0.917	0.932
36	N/A	Electric	46.0	15,400	61.1	59.8	98.0	0.948	0.946
37	N/A	Electric	26.7	13,000	38.7	43.2	98.0	0.912	0.902
38	N/A	Electric	49.7	18,100	68.6	73.3	98.0	0.914	0.942
39	N/A	Electric	35.8	15,000	53.8	48.5	98.0	0.927	0.868
40	N/A	Electric	45.3	15,400	62.7	64.2	98.0	0.922	0.931
41	N/A	Electric	45.2	15,000	66.1	68.7	98.0	0.949	0.919
42	N/A	Electric	36.0	14,900	53.8	54.8	98.0	0.917	0.941
43	N/A	Electric	44.8	14,800	64.9	59.4	98.0	0.958	0.926
44	N/A	Electric	54.5	15,300	80.7	77.2	98.0	0.959	0.952
45	N/A	Electric	45.0	15,200	63.7	56.8	98.0	0.937	0.904
46	N/A	Electric	44.7	15,600	60.7	64.8	98.0	0.915	0.901
47	N/A	Electric	35.9	15,400	52.4	51.9	98.0	0.932	0.922
48	N/A	Tabletop	35.0	15,200	52.9	48.0	98.0	0.877	0.805
49	N/A	Tabletop	25.0	15,400	37.5	45.3	98.0	0.905	0.859
50	N/A	Heat Pump	45.4	15,400	64.5	56.1	282.9	2.486	1.948
51	N/A	Heat Pump	45.5	15,000	57.3	58.9	270.3	2.270	2.572
52	N/A	Heat Pump	45.1	11,100	59.1	48.7	264.7	2.260	2.071
53	N/A	Heat Pump	58.8	15,300	71.5	68.6	296.9	2.280	2.496
54	N/A	Heat Pump	77.5	15,700	90.5	87.1	288.2	2.270	2.642
55	N/A	Heat Pump	80.8	1,800	57.0	58.0	288.0	2.330	2.540
56	1–1	Gas	45.7	39,300	91.6	86.9	91.0	0.789	0.806
57	1–2	Gas	47.9	40,400	89.5	77.3	80.3	0.682	0.704
58	CGS–11	Gas	47.5	40,600	87.5	78.8	83.5	0.697	0.729
59	1–6	Gas	39.0	39,900	65.2	75.6	77.6	0.600	0.653
60	1–11	Gas	28.8	29,600	55.4	52.8	80.2	0.636	0.597
61	1–34	Gas	38.0	39,900	68.5	69.5	82.3	0.649	0.595
62	1–41	Gas	38.2	38,500	70.0	75.9	85.7	0.719	0.750
63	CGS–14	Gas	48.5	40,200	94.9	89.5	82.9	0.625	0.649
64	CGS–19	Gas	27.9	35,400	66.8	67.9	79.9	0.626	0.597
65	CGS–23	Gas	49.3	39,500	89.2	70.0	77.1	0.587	0.560
66	CGS–26	Gas	28.7	30,600	52.5	51.9	77.4	0.612	0.578
67	CGS–32	Gas	38.3	37,400	74.4	70.6	78.7	0.645	0.651
68	CGS–36	Gas	38.6	34,700	74.9	68.0	79.5	0.624	0.574
69	CGS–37	Gas	39.0	38,600	71.3	62.5	81.0	0.622	0.577
70	CGS–38	Gas	28.7	30,600	55.1	59.6	78.8	0.625	0.596
71	CGS–4	Gas	38.7	40,100	64.2	78.8	79.1	0.602	0.637
72	CGS–6	Gas	47.4	50,500	84.9	115.0	78.8	0.580	0.611
73	CGS–8	Gas	48.3	37,600	84.1	78.5	79.5	0.675	0.711
74	1–9	Gas	28.2	59,100	93.0	97.9	80.3	0.688	0.718
75	1–4	Gas	47.9	39,200	88.4	80.7	79.7	0.605	0.656
76	1–7	Gas	47.9	35,300	79.5	69.6	81.8	0.608	0.580
77	1–8	Gas	47.9	40,200	78.0	70.8	79.0	0.596	0.593
78	1–12	Gas	38.2	37,800	75.0	71.5	79.4	0.632	0.558
79	1–13	Gas	48.0	37,700	94.7	87.2	77.6	0.597	0.613
80	1–14	Gas	47.6	37,700	86.3	81.7	75.9	0.575	0.611
81	1–15	Gas	28.0	31,400	57.1	50.6	83.5	0.648	0.598
82	1–17	Gas	47.8	37,900	87.4	81.7	80.8	0.592	0.622
83	1–18	Gas	38.9	37,400	75.4	73.6	81.8	0.633	0.588

TABLE III.26—CONSUMER STORAGE WATER HEATER TEST DATA—Continued

CS No.	AHRI No.	Type	Storage volume (gal)	Input rate (Btu/h)	Prior FHR (gal)	Updated FHR (gal)	Prior recovery efficiency (%)	EF	UEF
84	1–30	Gas	47.8	40,000	83.0	73.0	79.0	0.610	0.580
85	1–33	Gas	48.0	40,000	83.5	67.0	79.0	0.610	0.640
86	CGS–1	Gas	37.8	39,300	67.7	83.8	78.8	0.611	0.654
87	CGS–13	Gas	47.9	36,300	75.6	84.4	78.3	0.588	0.644
88	CGS–15	Gas	54.9	49,600	100.1	89.3	83.5	0.618	0.646
89	CGS–17	Gas	28.8	29,600	51.8	48.2	81.6	0.679	0.603
90	CGS–18	Gas	38.3	33,400	56.1	50.7	82.6	0.633	0.535
91	CGS–2	Gas	47.7	40,300	87.2	80.8	77.7	0.605	0.614
92	CGS–21	Gas	28.7	36,000	67.8	65.1	85.0	0.657	0.620
93	CGS–22	Gas	47.8	39,600	78.2	71.8	80.7	0.615	0.557
94	CGS–24	Gas	38.8	34,500	59.9	59.9	77.4	0.606	0.588
95	CGS–25	Gas	47.6	40,400	84.3	74.6	77.0	0.585	0.556
96	CGS–3	Gas	47.6	40,800	83.1	75.9	83.0	0.634	0.669
97	CGS–30	Gas	28.7	32,100	63.0	55.0	79.7	0.623	0.607
98	CGS–33	Gas	26.6	31,900	52.8	57.8	81.2	0.647	0.623
99	CGS–34	Gas	28.4	29,900	52.3	60.4	83.7	0.630	0.596
100	CGS–39	Gas	38.3	35,500	76.7	72.0	79.1	0.613	0.552
101	CGS–40	Gas	38.4	29,400	59.0	53.7	77.3	0.596	0.556
102	CGS–41	Gas	38.3	37,400	73.7	68.6	81.4	0.634	0.620
103	CGS–5	Gas	48.5	40,100	89.2	82.3	80.5	0.619	0.652
104	CGS–7	Gas	46.1	64,500	103.3	130.2	83.9	0.601	0.646
105	2–1	Gas	28.6	32,000	81.1	67.7	82.5	0.653	0.621
106	2–3	Gas	45.7	64,900	100.0	113.0	82.5	0.624	0.654
107	1–5, 10	Gas	38.4	39,500	65.7	64.9	79.1	0.602	0.571
108	1–35	Gas	46.0	60,000	100.0	113.0	82.5	0.624	0.654
109	1–36	Gas	38.1	39,300	71.8	68.6	81.2	0.688	0.633
110	1–43	Gas	38.1	39,300	69.3	68.6	79.8	0.675	0.646
111	CGS–12	Gas	49.7	39,400	90.6	81.5	81.6	0.699	0.713
112	CGS–31	Gas	38.3	39,700	70.8	66.0	78.0	0.651	0.626
113	CGS–35	Gas	38.2	40,600	69.4	67.3	80.5	0.691	0.662
114	2–2	Gas	48.2	39,800	83.6	81.3	77.5	0.652	0.689
115	1–3	Gas	48.1	41,200	87.9	80.1	75.2	0.640	0.685
116	1–37	Gas	48.1	39,400	86.5	82.9	80.0	0.666	0.646
117	CGS–10	Gas	38.1	37,800	71.7	78.5	82.9	0.697	0.725
118	CGS–16	Gas	47.9	65,700	112.5	114.4	78.3	0.642	0.693
119	CGS–9	Gas	48.6	39,800	92.5	90.7	81.6	0.689	0.704
120	1–22	Gas	39.1	40,100	69.4	87.9	79.3	0.667	0.699
121	1–51	Gas	38.4	38,100	71.2	65.1	79.5	0.614	0.576
122	1–19	Gas	38.2	40,700	77.2	65.8	80.0	0.680	0.658
123	1–21	Gas	48.1	40,400	87.5	82.0	76.6	0.606	0.639
124	1–25	Gas	48.2	39,500	86.6	76.5	79.2	0.590	0.636
125	1–50	Gas	48.1	39,700	91.7	78.6	80.9	0.612	0.636
126	1–47	Gas	38.1	39,600	68.6	77.4	79.7	0.679	0.689
127	1–48	Gas	47.5	61,400	112.0	104.9	82.1	0.683	0.690
128	1–49	Gas	47.5	39,500	85.2	75.9	81.3	0.661	0.674
129	1–20	Gas	47.9	49,700	92.4	86.5	81.7	0.673	0.676
130	1–52	Gas	47.9	44,100	86.9	79.7	81.2	0.682	0.691
131	1–16	Gas	36.8	36,000	67.3	61.6	80.9	0.615	0.592
132	1–44	Gas	48.6	39,200	94.8	91.6	77.4	0.625	0.613
133	1–27, 28, 29	Gas	39.0	35,900	62.6	61.1	79.4	0.625	0.602
134	1–26	Gas	48.1	38,200	83.5	73.9	82.7	0.634	0.592
135	1–45	Gas	38.0	39,300	74.4	75.1	78.3	0.623	0.647
136	CGS–20	Gas	37.8	39,900	75.0	68.4	78.0	0.575	0.529
137	CGS–27	Gas	28.9	30,500	57.0	67.7	79.3	0.628	0.597
138	CGS–28	Gas	38.3	40,700	72.9	66.9	79.3	0.578	0.529
139	CGS–29	Gas	39.4	40,800	72.0	73.5	78.3	0.602	0.580
140	1–40	Gas	38.1	40,700	71.8	68.8	77.1	0.610	0.648
141	1–42	Gas	48.3	39,800	86.0	85.8	80.9	0.673	0.715
142	1–46	Gas	38.3	39,200	71.8	68.1	79.1	0.660	0.633
143	1–23	Gas	38.3	41,600	68.2	84.7	82.6	0.677	0.699
144	1–31	Gas	47.9	42,000	68.0	85.0	82.0	0.680	0.700
145	1–38	Gas	37.8	39,200	87.2	66.5	80.2	0.682	0.560
146	1–39	Gas	46.1	50,000	97.4	92.6	81.8	0.669	0.688
147	1–24, 32	Gas	48.1	42,100	80.2	74.0	87.2	0.710	0.682
148	1–68	Electric	36.1	15,400	53.6	51.2	98.0	0.961	0.942
149	CES–11	Electric	28.6	15,400	42.1	45.9	98.0	0.947	0.897
150	CES–12	Electric	38.4	15,400	49.7	57.4	98.0	0.944	0.922
151	CES–13	Electric	49.8	15,400	63.6	63.3	98.0	0.954	0.911
152	CES–14	Electric	48.6	15,400	59.4	54.3	98.0	0.923	0.920

TABLE III.26—CONSUMER STORAGE WATER HEATER TEST DATA—Continued

CS No.	AHRI No.	Type	Storage volume (gal)	Input rate (Btu/h)	Prior FHR (gal)	Updated FHR (gal)	Prior recovery efficiency (%)	EF	UEF
153	CES–2	Electric	25.8	15,400	41.1	38.6	98.0	0.937	0.897
154	CES–3	Electric	25.6	15,400	43.7	41.4	98.0	0.911	0.890
155	CES–4	Electric	34.7	15,400	52.5	57.3	98.0	0.935	0.938
156	CES–5	Electric	27.7	15,400	46.4	49.1	98.0	0.940	0.898
157	CES–6	Electric	54.7	15,400	80.5	66.4	98.0	0.933	0.933
158	CES–7	Electric	45.2	15,400	66.4	64.2	98.0	0.939	0.912
159	CES–8	Electric	45.2	15,400	63.7	60.7	98.0	0.930	0.910
160	CES–9	Electric	36.1	15,400	54.2	51.5	98.0	0.914	0.888
161	2–4	Electric	39.0	15,400	59.0	55.0	98.0	0.950	0.920
162	2–7	Electric	40.6	15,400	64.9	59.4	98.0	0.960	0.926
163	2–8	Electric	27.3	15,400	45.3	36.5	98.0	0.962	0.878
164	1–64	Electric	36.3	15,400	55.0	52.0	98.0	0.950	0.950
165	1–65	Electric	45.7	15,400	58.0	61.0	98.0	0.940	0.930
166	1–66	Electric	27.1	15,400	48.0	48.0	98.0	0.930	0.870
167	1–53	Electric	45.5	15,400	64.3	60.1	98.0	0.939	0.919
168	1–54	Electric	36.4	15,400	53.9	55.6	98.0	0.932	0.929
169	1–56	Electric	27.4	15,400	47.7	42.1	98.0	0.943	0.911
170	1–57	Electric	36.4	15,400	57.5	51.3	98.0	0.941	0.915
171	1–58	Electric	54.8	15,400	71.0	61.1	98.0	0.936	0.907
172	1–59	Electric	36.2	15,400	59.1	57.0	98.0	0.941	0.931
173	1–69	Electric	45.4	15,400	59.3	58.3	98.0	0.947	0.922
174	1–60, 61, 62	Electric	48.0	15,400	65.3	61.0	98.0	0.940	0.910
175	1–55	Tabletop	36.0	15,400	45.6	58.3	98.0	0.873	0.873
176	1–70	Heat Pump	45.4	15,700	64.5	61.1	289.0	2.450	2.470
177	CES–1	Heat Pump	81.8	15,400	98.4	94.6	304.8	2.617	2.439
178	CES–10	Heat Pump	45.6	15,700	69.3	64.1	369.5	3.278	3.270
179	CES–15	Heat Pump	73.3	16,000	74.9	78.4	249.3	2.297	2.424
180	CES–16	Heat Pump	107.9	16,000	101.7	100.1	214.0	1.971	2.137
181	CES–17	Heat Pump	58.7	16,000	71.3	52.3	246.4	2.291	2.219
182	1–71, 72	Heat Pump	45.5	15,700	69.2	66.1	366.7	3.230	3.140
183	1–76	Heat Pump	75.5	15,700	96.0	89.6	386.5	3.310	3.330
184	1–63, 67	Heat Pump	77.5	15,400	81.8	74.8	262.1	2.242	2.270
185	1–73, 74, 75	Heat Pump	75.5	15,700	95.7	89.4	368.1	3.207	3.186

TABLE III.27—CONSUMER STORAGE WATER HEATER ATTRIBUTES

CS No.	NO$_X$ Emission level	Condensing	Vent type	Short or tall	Standing pilot
1	Low	Yes	Power	Short	No.
2	Low	Yes	Power	Tall	No.
3	Low	No	Atmospheric	Short	No.
4	Low	No	Atmospheric	Short	Yes.
5	Low	No	Atmospheric	Short	Yes.
6	Low	No	Atmospheric	Tall	No.
7	Low	No	Atmospheric	Tall	No.
8	Low	No	Atmospheric	Tall	Yes.
9	Low	No	Atmospheric	Tall	Yes.
10	Low	No	Atmospheric	Tall	Yes.
11	Low	No	Atmospheric	Tall	Yes.
12	Low	No	Power	Short	No.
13	Low	No	Power	Short	No.
14	Low	No	Power	Tall	No.
15	Low	No	Power	Tall	No.
16	Low	No	Power	Tall	No.
17	Low	No	Power	Tall	No.
18	Standard	No	Atmospheric	Short	Yes.
19	Standard	No	Atmospheric	Tall	Yes.
20	Ultra-Low	No	Atmospheric	Short	Yes.
21	Ultra-Low	No	Atmospheric	Tall	Yes.
22	Ultra-Low	No	Atmospheric	Tall	Yes.
23	Ultra-Low	No	Atmospheric	Tall	Yes.
24	Ultra-Low	No	Atmospheric	Tall	Yes.
25	Ultra-Low	No	Atmospheric	Tall	Yes.
26	Ultra-Low	No	Atmospheric	Tall	Yes.
27	N/A	N/A	N/A	Tall	No.
28	N/A	N/A	N/A	Tall	No.
29	N/A	N/A	N/A	Short	N/A.
30	N/A	N/A	N/A	Short	N/A.

TABLE III.27—CONSUMER STORAGE WATER HEATER ATTRIBUTES—Continued

CS No.	NO$_X$ Emission level	Condensing	Vent type	Short or tall	Standing pilot
31	N/A	N/A	N/A	Short	N/A.
32	N/A	N/A	N/A	Short	N/A.
33	N/A	N/A	N/A	Short	N/A.
34	N/A	N/A	N/A	Short	N/A.
35	N/A	N/A	N/A	Short	N/A.
36	N/A	N/A	N/A	Short	N/A.
37	N/A	N/A	N/A	Tall	N/A.
38	N/A	N/A	N/A	Tall	N/A.
39	N/A	N/A	N/A	Tall	N/A.
40	N/A	N/A	N/A	Tall	N/A.
41	N/A	N/A	N/A	Tall	N/A.
42	N/A	N/A	N/A	Tall	N/A.
43	N/A	N/A	N/A	Tall	N/A.
44	N/A	N/A	N/A	Tall	N/A.
45	N/A	N/A	N/A	Tall	N/A.
46	N/A	N/A	N/A	Tall	N/A.
47	N/A	N/A	N/A	Tall	N/A.
48	N/A	N/A	N/A	N/A	N/A.
49	N/A	N/A	N/A	N/A	N/A.
50	N/A	N/A	N/A	N/A	N/A.
51	N/A	N/A	N/A	N/A	N/A.
52	N/A	N/A	N/A	N/A	N/A.
53	N/A	N/A	N/A	N/A	N/A.
54	N/A	N/A	N/A	N/A	N/A.
55	N/A	N/A	N/A	N/A	N/A.
56	Low	Yes	Power	Tall	No.
57	Low	No	Atmospheric	Short	No.
58	Low	No	Atmospheric	Short	No.
59	Low	No	Atmospheric	Short	Yes.
60	Low	No	Atmospheric	Short	Yes.
61	Low	No	Atmospheric	Short	Yes.
62	Low	No	Atmospheric	Short	Yes.
63	Low	No	Atmospheric	Short	Yes.
64	Low	No	Atmospheric	Short	Yes.
65	Low	No	Atmospheric	Short	Yes.
66	Low	No	Atmospheric	Short	Yes.
67	Low	No	Atmospheric	Short	Yes.
68	Low	No	Atmospheric	Short	Yes.
69	Low	No	Atmospheric	Short	Yes.
70	Low	No	Atmospheric	Short	Yes.
71	Low	No	Atmospheric	Short	Yes.
72	Low	No	Atmospheric	Short	Yes.
73	Low	No	Atmospheric	Short	Yes.
74	Low	No	Atmospheric	Tall	No.
75	Low	No	Atmospheric	Tall	Yes.
76	Low	No	Atmospheric	Tall	Yes.
77	Low	No	Atmospheric	Tall	Yes.
78	Low	No	Atmospheric	Tall	Yes.
79	Low	No	Atmospheric	Tall	Yes.
80	Low	No	Atmospheric	Tall	Yes.
81	Low	No	Atmospheric	Tall	Yes.
82	Low	No	Atmospheric	Tall	Yes.
83	Low	No	Atmospheric	Tall	Yes.
84	Low	No	Atmospheric	Tall	Yes.
85	Low	No	Atmospheric	Tall	Yes.
86	Low	No	Atmospheric	Tall	Yes.
87	Low	No	Atmospheric	Tall	Yes.
88	Low	No	Atmospheric	Tall	Yes.
89	Low	No	Atmospheric	Tall	Yes.
90	Low	No	Atmospheric	Tall	Yes.
91	Low	No	Atmospheric	Tall	Yes.
92	Low	No	Atmospheric	Tall	Yes.
93	Low	No	Atmospheric	Tall	Yes.
94	Low	No	Atmospheric	Tall	Yes.
95	Low	No	Atmospheric	Tall	Yes.
96	Low	No	Atmospheric	Tall	Yes.
97	Low	No	Atmospheric	Tall	Yes.
98	Low	No	Atmospheric	Tall	Yes.
99	Low	No	Atmospheric	Tall	Yes.
100	Low	No	Atmospheric	Tall	Yes.
101	Low	No	Atmospheric	Tall	Yes.
102	Low	No	Atmospheric	Tall	Yes.

TABLE III.27—CONSUMER STORAGE WATER HEATER ATTRIBUTES—Continued

CS No.	NO$_X$ Emission level	Condensing	Vent type	Short or tall	Standing pilot
103	Low	No	Atmospheric	Tall	Yes.
104	Low	No	Atmospheric	Tall	Yes.
105	Low	No	Atmospheric	Tall	Yes.
106	Low	No	Atmospheric	Tall	Yes.
107	Low	No	Atmospheric	Tall	Yes.
108	Low	No	Not Specified	Not Specified	Not Specified.
109	Low	No	Power	Short	No.
110	Low	No	Power	Short	No.
111	Low	No	Power	Short	No.
112	Low	No	Power	Short	No.
113	Low	No	Power	Short	No.
114	Low	No	Power	Short	No.
115	Low	No	Power	Tall	No.
116	Low	No	Power	Tall	No.
117	Low	No	Power	Tall	No.
118	Low	No	Power	Tall	No.
119	Low	No	Power	Tall	No.
120	Standard	No	Atmospheric	Short	No.
121	Standard	No	Atmospheric	Short	Yes.
122	Standard	No	Atmospheric	Tall	No.
123	Standard	No	Atmospheric	Tall	Yes.
124	Standard	No	Atmospheric	Tall	Yes.
125	Standard	No	Atmospheric	Tall	Yes.
126	Standard	No	Power	Short	No.
127	Standard	No	Power	Short	No.
128	Standard	No	Power	Short	No.
129	Standard	No	Power	Tall	No.
130	Standard	No	Power	Tall	No.
131	Ultra-Low	No	Atmospheric	Short	Yes.
132	Ultra-Low	No	Atmospheric	Short	Yes.
133	Ultra-Low	No	Atmospheric	Short	Yes.
134	Ultra-Low	No	Atmospheric	Tall	Yes.
135	Ultra-Low	No	Atmospheric	Tall	Yes.
136	Ultra-Low	No	Atmospheric	Tall	Yes.
137	Ultra-Low	No	Atmospheric	Tall	Yes.
138	Ultra-Low	No	Atmospheric	Tall	Yes.
139	Ultra-Low	No	Atmospheric	Tall	Yes.
140	Ultra-Low	No	Power	Short	No.
141	Ultra-Low	No	Power	Short	No.
142	Ultra-Low	No	Power	Short	No.
143	Ultra-Low	No	Power	Tall	No.
144	Ultra-Low	No	Power	Tall	No.
145	Ultra-Low	No	Power	Tall	No.
146	Ultra-Low	No	Power	Tall	No.
147	Ultra-Low	No	Power	Tall	No.
148	N/A	N/A	N/A	Not Specified	N/A.
149	N/A	N/A	N/A	Not Specified	N/A.
150	N/A	N/A	N/A	Not Specified	N/A.
151	N/A	N/A	N/A	Not Specified	N/A.
152	N/A	N/A	N/A	Not Specified	N/A.
153	N/A	N/A	N/A	Not Specified	N/A.
154	N/A	N/A	N/A	Not Specified	N/A.
155	N/A	N/A	N/A	Not Specified	N/A.
156	N/A	N/A	N/A	Not Specified	N/A.
157	N/A	N/A	N/A	Not Specified	N/A.
158	N/A	N/A	N/A	Not Specified	N/A.
159	N/A	N/A	N/A	Not Specified	N/A.
160	N/A	N/A	N/A	Not Specified	N/A.
161	N/A	N/A	N/A	Not Specified	N/A.
162	N/A	N/A	N/A	Not Specified	N/A.
163	N/A	N/A	N/A	Not Specified	N/A.
164	N/A	N/A	N/A	Short	N/A.
165	N/A	N/A	N/A	Short	N/A.
166	N/A	N/A	N/A	Short	N/A.
167	N/A	N/A	N/A	Tall	N/A.
168	N/A	N/A	N/A	Tall	N/A.
169	N/A	N/A	N/A	Tall	N/A.
170	N/A	N/A	N/A	Tall	N/A.
171	N/A	N/A	N/A	Tall	N/A.
172	N/A	N/A	N/A	Tall	N/A.
173	N/A	N/A	N/A	Tall	N/A.
174	N/A	N/A	N/A	Tall	N/A.

TABLE III.27—CONSUMER STORAGE WATER HEATER ATTRIBUTES—Continued

CS No.	NO_X Emission level	Condensing	Vent type	Short or tall	Standing pilot
175	N/A	N/A	N/A	Short	N/A.
176	N/A	N/A	N/A	Not Specified	N/A.
177	N/A	N/A	N/A	Not Specified	N/A.
178	N/A	N/A	N/A	Not Specified	N/A.
179	N/A	N/A	N/A	Not Specified	N/A.
180	N/A	N/A	N/A	Not Specified	N/A.
181	N/A	N/A	N/A	Not Specified	N/A.
182	N/A	N/A	N/A	Not Specified	N/A.
183	N/A	N/A	N/A	Tall	N/A.
184	N/A	N/A	N/A	Tall	N/A.
185	N/A	N/A	N/A	Tall	N/A

ii. Conversion Factor Results

For consumer storage water heaters, DOE is proposing to use the regression method described in section III.C.5 to predict first-hour ratings (FHRs) under the UEF test procedure to be used in the conversion to UEF since no "analytical approach" has been developed. Of the factors considered, DOE found that the first-hour rating determined under the EF test procedure was the best overall predictor of the new first-hour rating. These findings were based on the RMSDs between predictions and measured values. The resulting equations, which are proposed for determining the new FHR of consumer storage water heaters, are presented in Table III.28.

TABLE III.28—PROPOSED CONSUMER STORAGE WATER HEATER FIRST-HOUR RATING CONVERSION FACTOR EQUATIONS

Product class	Distinguishing criteria	Conversion factor
Consumer Gas-fired Water Heater	Non-Condensing, Standard or Low NO_X	New FHR = $7.9592 + 0.8752 \times FHR_P$.
	Non-Condensing, Ultra-Low NO_X	New FHR = $25.0680 + 0.6535 \times FHR_P$.
	Condensing	New FHR = $1.0570 \times FHR_P$.
Consumer Oil-fired Water Heater	N/A	New FHR = $1.1012 \times FHR_P$.
Consumer Electric Water Heater	Electric Resistance	New FHR = $9.2827 + 0.8092 \times FHR_P$.
	Tabletop	New FHR = $41.5127 + 0.1989 \times FHR_P$.
	Heat Pump	New FHR = $-4.2705 + 0.9947 \times FHR_P$.

New FHR is the predicted first-hour rating that would result under the UEF test method and is used for conversion to UEF; FHR_P is the first-hour rating determined under the EF test procedure, and the slope and intercept are constants obtained from a linear regression. While most of the data allowed for such a regression fit, in two cases (condensing gas-fired and oil-fired) the available data were too limited to produce reliable regressions for the full set of parameters. To constrain the regression so as to generate more reliable predictions for those smaller sets of data, the intercepts of the regressions were assigned a value of zero, meaning that a water heater with an FHR_P of zero would also have a New FHR of zero. This assignment is reasonable because if a hypothetical water heater were not able to deliver any water under the EF test procedure, it also would not be able to deliver water under the UEF test procedure.

In response to the first-hour rating mathematical conversion developed in the NOPR, AHRI argued that the results are often inconsistent and show no trend, particularly for the consumer gas-fired storage product class in the medium and high draw patterns. (AHRI, No. 13 at p. 2) Bradford White commented that its testing showed that the FHR for most models went down with the change in test procedure, some of which were affected more than others. (Bradford White, No. 14 at p. 2) NEEA stated that the conversion factors that convert prior FHR ratings to new FHR ratings produce unacceptably large deviations from the measured FHR ratings for a significant majority of the water heaters tested. Further, NEEA commented that these large variations caused 9 of 43 water heaters tested to fall into a different draw bin using the conversion as compared to the tested rating, and it recommended that given the critical nature of the FHR in selecting the proper draw pattern, DOE should not attempt to mathematically derive FHR and maximum GPM ratings, but should instead require them to be measured in accordance with the new test procedures. (NEEA, No. 15 at pp. 5–6)

In response, DOE notes that it explored several possible conversions for developing the FHR conversion. The best trend was observed based on a regression as a function of first-hour rating. The average RMSD value resulting from this approach (7.56 gallons) is the lowest RMSD observed in the FHR analysis, and DOE is unaware of any approaches that would result in improved accuracy. Further, as discussed above in section III.E.2, the predicted UEF values (which are based in part on the predicted FHR values due to the dependence of draw pattern on FHR) are reasonable because they are less than the variability currently allowed in DOE's regulations that manufacturers are required to use and rate their basic models. DOE seeks further comment regarding other methods for predicting FHR that could result in lower RMSDs. In the absence of any known alternatives, DOE plans to continue the use of this methodology, but seeks further comment on other approaches for converting first-hour ratings.

After determining the converted first-hour rating, the next step in the conversion process is to determine which draw pattern is to be applied to convert from EF to UEF. After the first-hour rating under the uniform efficiency descriptor is determined using the conversion factor above, the value can be applied to determine the appropriate draw pattern bin (*i.e.*, very small, low, medium, or high) using Table 1 of the uniform efficiency descriptor test procedure. 10 CFR 430, Subpart B, Appendix E, section 5.4.1. With the draw bin known, the UEF value based on the WHAM analytical model can be calculated using the process described in section III.C.4.c for all consumer water heater types. Alternatively, DOE investigated the step regression approach described in section III.C.2 to convert EF to UEF. As described in the April 2015 NOPR, DOE found that a third technique, a combination of these approaches in which the results of the WHAM analytical model are used as the independent variable in a standard linear regression analysis, produced a conversion with the lowest RMSD observed. 80 FR 20116, 20132 (April 14, 2015). Separate conversion equations were developed for the same categories as used for first-hour rating. The results of the first-hour regression, the WHAM analytical model, the step regression model, and the combined WHAM-regression model are presented in Table III.30. In light of the additional data compiled for the SNOPR, the RMSD for the non-heat pump storage water heater classes is 0.018 when using a combined WHAM-regression model, and as noted, this is the lowest RMSD observed. DOE, therefore, continues to propose the use of the combined WHAM-regression approach to calculate the conversion factor for all types of consumer storage water heaters except for heat pump water heaters. The WHAM-regression approach accounts for the test procedure changes in terms of daily volume delivered and storage tank temperature, and it corrects for the unaccounted changes using a regression with actual test data. The resulting equations for determining the UEF of consumer storage water heaters are shown in Table III.29.

For heat pump water heaters, DOE determined in the April 2015 NOPR that, although the relevant data can be obtained through testing (and for the units tested by DOE were obtained), the data are not available within the certification databases to compute the WHAM estimate for heat pump water heaters on the market; therefore, a linear regression equation was developed in which the UEF is estimated solely based on the EF. 80 FR 20116, 20132 (April 14, 2015). DOE received no comments submitting data on this point or identifying sources from which DOE could obtain such data. In this SNOPR, DOE proposes that manufacturers should apply the conversions to their test data directly, and then the converted test values will be used to rate the water heater model in accordance with the certification provisions found in 10 CFR 429.17. Because both DOE's data from its testing and the test data submitted by AHRI include all of the necessary information to estimate the efficiency using the WHAM equation, WHAM and WHAM-Regression conversions can be derived based on the tested values. Under either of these approaches, manufacturers would use data from EF tests that is generally not publicly-available (*e.g.*, the recovery efficiency of the heat pump) along with a WHAM-based equation to convert to the UEF metric. The WHAM, regression (modified from the NOPR proposal as discussed immediately below), and WHAM-Regression conversion approaches result in RMSD values of 0.219, 0.194, and 0.197, respectively. The regression approach was modified as discussed below and has the lowest RMSD value, and, therefore, DOE continues to propose to use the regression conversion approach for converting to UEF for HPWH.

GE stated that the proposed conversion for HPWH is inaccurate, and suggested including drawn volume as an independent variable in the regression analysis to improve the conversion for high-EF heat pump water heaters. (GE, No. 12 at p. 1) GE also provided an equation which related EF and drawn volume to UEF. (GE, No. 12 at p. 4) DOE considered these suggestions and agrees that the inclusion of drawn volume as a regression variable would help improve the conversion factor, so DOE has updated the equation appropriately. The GE equation and the new DOE-derived conversion factor results in RMSD values of 0.229 and 0.194, respectively, which is an improvement over the previous conversion factor's RMSD value for heat pump water heaters, which is 0.438 (recalculated with new test data). 80 FR 20116, 20133 (April 14, 2015). Even after considering the large disparity between EF standards and the rated EF values for heat pump water heaters, DOE has nonetheless tentatively concluded that this relatively high RMSD would not cause a water heater to fail to meet the standards based on UEF. Furthermore, the disparity between the UEF of heat pump water heaters and electric resistance water heaters is large enough that consumers would still be made aware of the significant increase in efficiency that heat pump water heaters provide over electric resistance water heaters.

In the equations in Table III.29, UEF_{WHAM} is the conversion factor calculated using the WHAM analytical model, described in section III.C.4.c, EF is the measured energy factor, and DV is the drawn volume in gallons.

TABLE III.29—PROPOSED CONSUMER STORAGE UEF CONVERSION FACTOR EQUATIONS

Product class	Distinguishing criteria	Conversion factor *
Consumer Gas-fired Water Heater	Non-Condensing, Standard or Low NO_X	New UEF = $-0.0002 + 0.9858 \times UEF_{WHAM}$.
	Non-Condensing, Ultra-Low NO_X	New UEF = $0.0746 + 0.8653 \times UEF_{WHAM}$.
	Condensing	New UEF = $0.4242 + 0.4641 \times UEF_{WHAM}$.
Consumer Oil-fired Water Heater	N/A	New UEF = $-0.0934 + 1.1144 \times UEF_{WHAM}$.
Consumer Electric Water Heater	Conventional	New UEF = $0.4774 + 0.4740 \times UEF_{WHAM}$.
	Tabletop	New UEF = $-0.3305 + 1.3983 \times UEF_{WHAM}$.
	Heat Pump	New UEF = $0.1513 + 0.8407 \times EF + 0.0043 \times DV$.

TABLE III.30—CONSUMER STORAGE WATER HEATER CONVERSION FACTOR RESULTS

CS No.	Tested FHR (gal)	Regression FHR (gal)	Tested UEF	WHAM UEF	Regression UEF	WHAM-Regression UEF
1	104.2	78.0	0.802	0.821	0.805	0.805
2	85.0	96.2	0.826	0.865	0.826	0.826
3	80.9	73.2	0.714	0.718	0.685	0.708
4	86.7	93.3	0.634	0.648	0.611	0.638

TABLE III.30—CONSUMER STORAGE WATER HEATER CONVERSION FACTOR RESULTS—Continued

CS No.	Tested FHR (gal)	Regression FHR (gal)	Tested UEF	WHAM UEF	Regression UEF	WHAM-Regression UEF
5	64.8	70.4	0.600	0.607	0.624	0.599
6	75.7	72.3	0.719	0.732	0.694	0.722
7	63.8	78.1	0.669	0.694	0.702	0.684
8	87.7	91.3	0.635	0.645	0.608	0.635
9	77.8	70.9	0.635	0.640	0.608	0.631
10	64.4	59.6	0.605	0.598	0.618	0.589
11	70.9	73.5	0.570	0.598	0.618	0.590
12	65.1	68.1	0.624	0.649	0.660	0.639
13	74.1	69.4	0.654	0.656	0.668	0.647
14	94.6	92.8	0.718	0.721	0.695	0.711
15	68.1	65.7	0.677	0.679	0.691	0.670
16	81.1	86.9	0.676	0.705	0.669	0.694
17	108.8	102.5	0.680	0.686	0.651	0.676
18	81.1	66.6	0.628	0.643	0.602	0.634
19	87.0	69.4	0.641	0.650	0.611	0.641
20	64.8	69.7	0.598	0.584	0.600	0.580
21	70.6	61.7	0.561	0.586	0.607	0.582
22	88.2	85.2	0.662	0.668	0.622	0.652
23	84.0	86.6	0.640	0.584	0.559	0.580
24	51.5	58.0	0.603	0.623	0.632	0.613
25	83.2	82.5	0.617	0.632	0.594	0.622
26	97.9	92.5	0.596	0.617	0.582	0.609
27	127.4	123.8	0.641	0.659	0.641	0.641
28	111.6	115.4	0.528	0.557	0.528	0.528
29	39.7	42.8	0.903	0.926	0.922	0.916
30	42.9	44.0	0.891	0.905	0.912	0.906
31	52.3	54.2	0.937	0.935	0.917	0.921
32	46.2	42.3	0.902	0.919	0.919	0.913
33	50.0	52.3	0.906	0.912	0.916	0.910
34	65.3	55.0	0.909	0.922	0.908	0.914
35	59.9	63.3	0.932	0.906	0.898	0.907
36	59.8	58.7	0.946	0.943	0.922	0.924
37	43.2	40.6	0.902	0.866	0.894	0.888
38	73.3	64.8	0.942	0.903	0.895	0.906
39	48.5	52.8	0.868	0.891	0.906	0.900
40	64.2	60.0	0.931	0.912	0.902	0.910
41	68.7	62.8	0.919	0.944	0.923	0.925
42	54.8	52.8	0.941	0.906	0.898	0.907
43	59.4	61.8	0.926	0.955	0.930	0.930
44	77.2	74.6	0.952	0.965	0.930	0.935
45	56.8	60.9	0.904	0.930	0.913	0.918
46	64.8	58.4	0.901	0.905	0.897	0.906
47	51.9	51.7	0.922	0.923	0.909	0.915
48	48.0	52.0	0.805	0.812	0.867	0.805
49	45.3	49.0	0.859	0.855	0.888	0.865
50	56.1	59.9	1.948	2.441	2.478	2.494
51	58.9	52.7	2.572	2.215	2.296	2.312
52	48.7	54.5	2.071	2.049	2.214	2.177
53	68.6	66.8	2.496	2.202	2.305	2.301
54	87.1	85.7	2.642	2.401	2.421	2.462
55	58.0	52.4	2.540	2.213	2.347	2.310
56	86.9	96.8	0.806	0.817	0.804	0.803
57	77.3	86.3	0.704	0.710	0.676	0.699
58	78.8	84.5	0.729	0.728	0.690	0.718
59	75.6	65.0	0.653	0.637	0.601	0.628
60	52.8	56.4	0.597	0.615	0.634	0.606
61	69.5	67.9	0.595	0.628	0.646	0.619
62	75.9	69.2	0.750	0.750	0.710	0.739
63	89.5	91.0	0.649	0.667	0.624	0.658
64	67.9	66.4	0.597	0.605	0.625	0.596
65	70.0	86.0	0.560	0.566	0.590	0.557
66	51.9	53.9	0.578	0.592	0.612	0.583
67	70.6	73.1	0.651	0.627	0.642	0.618
68	68.0	73.5	0.574	0.603	0.623	0.594
69	62.5	70.4	0.577	0.600	0.622	0.591
70	59.6	56.2	0.596	0.605	0.624	0.596
71	78.8	64.1	0.637	0.642	0.603	0.632
72	115.0	82.3	0.611	0.622	0.583	0.613
73	78.5	81.6	0.711	0.702	0.670	0.692
74	97.9	89.4	0.718	0.714	0.682	0.704

TABLE III.30—CONSUMER STORAGE WATER HEATER CONVERSION FACTOR RESULTS—Continued

CS No.	Tested FHR (gal)	Regression FHR (gal)	Tested UEF	WHAM UEF	Regression UEF	WHAM-Regression UEF
75	80.7	85.3	0.656	0.645	0.606	0.636
76	69.6	77.5	0.580	0.584	0.609	0.576
77	70.8	76.2	0.593	0.574	0.598	0.565
78	71.5	73.6	0.558	0.612	0.631	0.603
79	87.2	90.8	0.613	0.635	0.599	0.626
80	81.7	83.5	0.611	0.614	0.579	0.605
81	50.6	57.9	0.598	0.625	0.645	0.616
82	81.7	84.5	0.622	0.636	0.594	0.627
83	73.6	73.9	0.588	0.611	0.632	0.602
84	73.0	80.6	0.580	0.589	0.611	0.580
85	67.0	81.0	0.640	0.589	0.611	0.580
86	83.8	67.2	0.654	0.649	0.611	0.639
87	84.4	74.1	0.644	0.629	0.590	0.620
88	89.3	95.6	0.646	0.662	0.618	0.653
89	48.2	53.3	0.603	0.606	0.674	0.598
90	50.7	57.1	0.535	0.544	0.632	0.536
91	80.8	84.3	0.614	0.642	0.606	0.632
92	65.1	67.3	0.620	0.634	0.653	0.625
93	71.8	76.4	0.557	0.593	0.615	0.584
94	59.9	60.4	0.588	0.586	0.607	0.577
95	74.6	81.7	0.556	0.564	0.588	0.555
96	75.9	80.7	0.669	0.675	0.632	0.665
97	55.0	63.1	0.607	0.602	0.622	0.593
98	57.8	54.2	0.623	0.626	0.644	0.617
99	60.4	53.7	0.596	0.606	0.629	0.597
100	72.0	75.1	0.552	0.592	0.613	0.583
101	53.7	59.6	0.556	0.574	0.598	0.566
102	68.6	72.5	0.620	0.613	0.632	0.604
103	82.3	86.0	0.652	0.658	0.619	0.649
104	130.2	98.4	0.646	0.648	0.602	0.639
105	67.7	78.9	0.621	0.632	0.650	0.623
106	113.0	95.5	0.654	0.666	0.623	0.656
107	64.9	65.5	0.571	0.580	0.603	0.571
108	113.0	95.5	0.654	0.666	0.623	0.656
109	68.6	70.8	0.633	0.672	0.682	0.662
110	68.6	68.6	0.646	0.659	0.670	0.649
111	81.5	87.3	0.713	0.726	0.692	0.715
112	66.0	69.9	0.626	0.634	0.648	0.625
113	67.3	68.7	0.662	0.676	0.684	0.666
114	81.3	81.1	0.689	0.680	0.649	0.670
115	80.1	84.9	0.685	0.666	0.638	0.656
116	82.9	83.7	0.646	0.696	0.662	0.686
117	78.5	70.7	0.725	0.727	0.690	0.716
118	114.4	106.4	0.693	0.673	0.640	0.663
119	90.7	88.9	0.704	0.718	0.683	0.707
120	87.9	68.7	0.699	0.695	0.663	0.685
121	65.1	70.3	0.576	0.593	0.614	0.584
122	65.8	75.5	0.658	0.664	0.674	0.655
123	82.0	84.5	0.639	0.641	0.607	0.631
124	76.5	83.8	0.636	0.632	0.592	0.623
125	78.6	88.2	0.636	0.653	0.612	0.644
126	77.4	68.0	0.689	0.706	0.674	0.696
127	104.9	106.0	0.690	0.714	0.677	0.703
128	75.9	82.5	0.674	0.695	0.657	0.685
129	86.5	88.8	0.676	0.705	0.668	0.695
130	79.7	84.0	0.691	0.711	0.676	0.701
131	61.6	69.0	0.592	0.592	0.610	0.587
132	91.6	87.0	0.613	0.658	0.618	0.644
133	61.1	66.0	0.602	0.605	0.618	0.598
134	73.9	79.6	0.592	0.611	0.625	0.604
135	75.1	73.7	0.647	0.658	0.616	0.644
136	68.4	74.1	0.529	0.552	0.580	0.552
137	67.7	62.3	0.597	0.607	0.620	0.600
138	66.9	72.7	0.529	0.554	0.582	0.554
139	73.5	72.1	0.580	0.581	0.601	0.577
140	68.8	72.0	0.648	0.591	0.607	0.586
141	85.8	81.3	0.715	0.704	0.654	0.683
142	68.1	72.0	0.633	0.643	0.644	0.631
143	84.7	69.6	0.699	0.710	0.657	0.689
144	85.0	69.5	0.700	0.711	0.660	0.690

TABLE III.30—CONSUMER STORAGE WATER HEATER CONVERSION FACTOR RESULTS—Continued

CS No.	Tested FHR (gal)	Regression FHR (gal)	Tested UEF	WHAM UEF	Regression UEF	WHAM-Regression UEF
145	66.5	82.1	0.560	0.666	0.661	0.651
146	92.6	88.7	0.688	0.702	0.651	0.682
147	74.0	77.4	0.682	0.690	0.682	0.672
148	51.2	52.7	0.942	0.957	0.932	0.931
149	45.9	43.4	0.897	0.924	0.921	0.915
150	57.4	49.5	0.922	0.938	0.919	0.922
151	63.3	60.7	0.911	0.950	0.926	0.927
152	54.3	57.3	0.920	0.914	0.903	0.910
153	38.6	42.5	0.897	0.907	0.913	0.907
154	41.4	44.6	0.890	0.865	0.893	0.887
155	57.3	51.8	0.938	0.927	0.912	0.917
156	49.1	46.8	0.898	0.912	0.916	0.910
157	66.4	74.4	0.933	0.925	0.910	0.916
158	64.2	63.0	0.912	0.932	0.915	0.919
159	60.7	60.8	0.910	0.922	0.908	0.914
160	51.5	53.1	0.888	0.903	0.896	0.905
161	55.0	57.0	0.920	0.945	0.923	0.925
162	59.4	61.8	0.926	0.957	0.931	0.931
163	36.5	45.9	0.878	0.949	0.933	0.927
164	52.0	53.8	0.950	0.945	0.923	0.925
165	61.0	56.2	0.930	0.933	0.916	0.920
166	48.0	48.1	0.870	0.896	0.908	0.902
167	60.1	61.3	0.919	0.932	0.915	0.919
168	55.6	52.9	0.929	0.924	0.909	0.915
169	42.1	47.8	0.911	0.917	0.918	0.912
170	51.3	55.8	0.915	0.934	0.916	0.920
171	61.1	66.7	0.907	0.929	0.913	0.918
172	57.0	57.1	0.931	0.934	0.916	0.920
173	58.3	57.3	0.922	0.941	0.921	0.924
174	61.0	62.1	0.910	0.933	0.916	0.920
175	58.3	50.6	0.873	0.856	0.864	0.867
176	61.1	59.9	2.470	2.394	2.448	2.456
177	94.6	93.6	2.439	2.715	2.713	2.716
178	64.1	64.7	3.270	3.223	3.144	3.127
179	78.4	70.2	2.424	2.344	2.444	2.416
180	100.1	96.9	2.137	2.012	2.170	2.147
181	52.3	66.7	2.219	2.266	2.314	2.353
182	66.1	64.5	3.140	3.173	3.103	3.087
183	89.6	91.2	3.330	3.436	3.295	3.299
184	74.8	77.0	2.270	2.193	2.272	2.293
185	89.4	91.0	3.186	3.316	3.208	3.202

In response to the UEF conversion for the NOPR, AHRI commented that units tested with the very small, low, and medium draw patterns will likely have UEF values less than EF, while units tested with the high draw pattern will likely have UEF values greater than EF due to standby times. (AHRI, No. 13 at p. 6) Were standby time the only factor affecting the difference between EF and UEF, AHRI's argument would have some merit. However, in 9 percent of the consumer storage tests, a pattern opposite from what AHRI suggested was observed. This empirical observation indicates that AHRI's assumptions are not wholly correct. AHRI also commented that for most of the electric resistance water heater samples, the calculated conversion factor using the WHAM-regression UEF model does not track with the tested UEF (*i.e.*, some values are higher than the test result, others lower). (AHRI, No. 13 at p. 5) Further, AHRI stated that for electric resistance models, the measured UEF is consistently lower than the measured EF, although the amount of difference varies. AHRI stated that the data for units in the low-usage bin indicate a very significant miscalculation of the effect of the UEF test procedure on those models, and that the converted UEF value in most cases is higher than the measured UEF value, which suggests that the converted UEF formula is underestimating the effect of the uniform energy descriptor test procedure. (AHRI, No. 6 at p. 2) AHRI also pointed out that the measured UEFs for low-input (<10,000 Btu/h) heat pump water heaters were higher than the measured EF, and for the one higher-input unit, the measured UEF was lower than the measured EF. However, with one exception, the calculated UEF using the proposed conversion exhibited the opposite results. (AHRI, No. 13 at p. 5)

Rheem commented that several electric storage water heaters (both heat pump and non-heat pump) in the medium draw pattern show an increased UEF rating as compared to EF in DOE's test results. However, Rheem asserted that since the UEF test method has more standby time than the EF test method, the resulting UEF would be expected to decrease, and stated that it has observed a consistent decrease in the UEF of electric storage water heaters in the medium draw bin, as compared to the EF rating. (Rheem, No. 11 at pp. 4–5)

With respect to AHRI's observation that the WHAM-regression model does not perfectly reproduce the UEF measurements of every model, DOE notes that, as discussed previously, a simple conversion formula will not reproduce identically the results that one would measure by applying the EF and UEF test methods for each and every unit. Yet DOE's task, as required by the statute, is to prepare a set of conversion formulas. DOE understands the statute, by implication, to contemplate that for any given unit, there may be some difference between the formula output and the comparative EF and UEF test results.

AHRI's observation that the measured UEF is consistently less than the measured EF for electric resistance storage water heaters in the low-draw bin generally still holds for the conversion factor proposed in this SNOPR, and as stated above, this behavior is expected. Of the 13 low-draw-pattern units for which test data are available for the SNOPR, the conversion factor predicts a UEF higher than the tested UEF in 9 cases, equal to the tested UEF in 3 cases, and lower than the predicted UEF in 1 case. DOE reasons that this result is due to the large number of medium-draw-pattern units used to derive the conversion factor. Similarly, the converted UEF for the one high-draw-pattern electric storage water heater is below the tested UEF value. Because the regression analysis is conducted across all draw patterns for a given class, the result may more heavily favor draw patterns with more data present. DOE believes that proposing a separate conversion for each draw pattern would eliminate this issue. However, if DOE were to propose conversions for each draw pattern, the number of UEF conversion equations would increase from 26 to 104. DOE believes a separate conversion factor for each draw pattern would add a significant amount of complexity to the conversion factor that would not be justified by the slight skew toward draw patterns with more units (and therefore more test data). DOE also notes that the converted values are not always higher than the tested values under the conversions proposed in this SNOPR indicating that this effect does not occur consistently for all units. Further, Rheem's observation that the consumer electric storage medium-draw-pattern testing yields UEFs greater than corresponding EF values for some units appears to occur in both the DOE and AHRI data sets, suggesting that standby time is not the only variable to consider when comparing results from the two test procedures. AHRI's observation about the effect of the input rate on the difference between measured UEF and EF in the heat pump water heater tests based on the NOPR data appears not to hold with the addition of the AHRI test data.

For gas-fired storage water heaters, AHRI commented that in the medium-usage bin, the measured UEF is consistently lower than the measured EF, but there is no consistent pattern in the difference between the measured UEF and the converted UEF. (AHRI, No. 6 at p. 2) For gas-fired storage water heaters in the high-usage bin, AHRI stated that the measured UEF is consistently higher than the measured EF, and there is no consistent relationship between the converted UEF value and the measured UEF value. (AHRI, No. 6 at p. 2) AHRI and Rheem commented that, for ultra-low NO_X gas-fired water heaters, the measured UEF for the short models was less than the measured EF and the measured UEF for the tall models was greater than the measured EF, but that the calculated UEF using the conversion exhibits the opposite relationship. AHRI and Rheem suggested the trend requires further test data for such units. (AHRI, No. 13 at p. 5; Rheem, No. 11 at p. 7)

In general, measured UEF values in the very small, low, or medium draw patterns will usually be lower than their respective measured EF values, and measured UEF values in the high draw patterns will usually be higher than their respective measured EF value. Also, this outcome (*i.e.*, converted results both higher and lower than the measured results for a category of water heater) is what one should expect if the conversion is, overall, a reasonable representation of efficiency. Therefore, AHRI's comments about the consumer gas-fired storage test and conversion data for the medium and high draw pattern reflect the expected result of the conversion.

AHRI and Rheem's comment about the ultra-low NO_X short comparison of measured EF and UEF seems to still hold with the addition of the AHRI test data; that is, the measured UEF for 4 of the 7 short models was less than the measured EF, equal to the measured EF for 1 unit, and greater than the measured EF for 2 units. The measured UEF for the tall models was greater than the measured EF in 8 of the 17 units, and less than the measured EF in the other 9 units. When examining the converted UEF values, 5 short units have converted UEFs less than the measured EF and 2 that are greater, while the same relationship exists in the converted UEF data as was observed in the measured UEF data for the tall units. Further, deriving separate conversions for short and tall ultra-low NO_X water heaters decreases the RMSD value by less than 0.0015, which seems like a negligible improvement when weighed against the added complexity of an additional conversion factor. DOE also notes that it is not aware of an industry-accepted consensus for determining whether a water heater is "tall" or "short," which makes implementing a conversion based on this factor difficult.

b. Consumer Instantaneous Water Heaters

i. Test Results

DOE has tested 22 consumer instantaneous water heaters to both the EF and UEF test procedures, and AHRI has supplied test data for 36 additional units of this water heater type.[13] [14] Table III.31 presents the test data used to derive the proposed consumer instantaneous water heater conversion factors. DOE notes that 1 of the 53 gas-fired instantaneous water heaters that were tested is not rated to meet the current energy conservation standards (compliance required April 16, 2015). However, as discussed in section III.E.2.a.i, DOE believes that these data points are valid for the purpose of determining the mathematical conversion factors. It is noted that test results show measured recovery efficiencies above 100 percent and EFs and UEFs above 1 for electric instantaneous units; DOE acknowledges that these results appear to violate theoretical limits and believes that these results are an artifact of measurement uncertainty. Table III.32 shows the water heater attributes by unit described in section III.E.1.

---

[13] The AHRI submitted test data point CIS–5 was not used because the measured input rate was greater than the maximum allowable deviation from the rated input rate of 2 percent, resulting in an invalid test.

[14] If multiple tests were conducted on either the same unit or same basic model of a water heater, the results were averaged to produce the values reported in this SNOPR. In one instance within the AHRI submitted data for consumer instantaneous water heaters, three tests were conducted, where two tests were conducted on the same unit and another test was conducted on a unit of the same basic model. The two tests of the same unit were averaged and this value was then averaged with the results of the test of the unit of the same basic model.

TABLE III.31—CONSUMER INSTANTANEOUS WATER HEATER TEST DATA

CI No.	AHRI No.	Type	Input rate (Btu/h)	Prior max GPM	Updated max GPM	Prior recovery efficiency (%)	EF	UEF
1	N/A.	Gas	142,500	3.0	3.4	80.9	0.801	0.800
2	N/A.	Gas	190,800	4.2	4.8	81.4	0.813	0.820
3	N/A.	Gas	120,900	2.7	3.1	82.6	0.828	0.809
4	N/A.	Gas	141,100	3.1	3.6	81.7	0.812	0.823
5	N/A.	Gas	175,800	3.7	4.3	84.5	0.838	0.833
6	N/A.	Gas	178,500	4.1	4.7	83.8	0.838	0.830
7	N/A.	Gas	199,000	4.6	4.9	86.9	0.872	0.841
8	N/A.	Gas	179,900	4.0	4.6	80.3	0.803	0.840
9	N/A.	Gas	180,400	3.9	4.6	85.1	0.852	0.832
10	N/A.	Gas	199,200	4.3	5.1	75.0	0.743	0.799
11	N/A.	Gas	151,700	3.4	3.9	85.4	0.853	0.813
12	N/A.	Gas	199,800	4.8	4.1	93.8	0.932	0.939
13	N/A.	Gas	197,200	5.2	5.8	96.7	0.966	0.958
14	N/A.	Gas	154,100	4.0	4.5	91.6	0.913	0.925
15	N/A.	Gas	201,300	4.9	5.7	88.0	0.851	0.884
16	N/A.	Gas	117,800	2.5	2.9	77.7	0.776	0.757
17	N/A.	Gas	148,800	3.3	3.7	82.6	0.823	0.811
18	N/A.	Electric	33,100	0.9	1.0	101.7	1.018	1.010
19	N/A.	Electric	7,800	0.2	0.2	101.2	1.013	0.983
20	N/A.	Electric	19,800	0.5	0.6	102.2	1.020	1.006
21	N/A.	Electric	26,000	0.7	0.8	102.0	1.019	1.007
22	N/A.	Electric	31,000	0.8	0.9	101.5	1.017	0.982
23	1–94	Gas	187,800	4.0	4.5	80.2	0.794	0.809
24	1–92, 93	Gas	187,900	4.0	4.4	83.0	0.816	0.815
25	CIS–1	Gas	137,700	3.1	3.6	83.6	0.832	0.812
26	CIS–2	Gas	198,300	4.3	5.0	85.0	0.845	0.843
27	CIS–3	Gas	151,600	3.4	3.9	84.8	0.845	0.806
28	CIS–4	Gas	202,100	4.4	5.1	91.7	0.916	0.869
29	CIS–6	Gas	148,400	3.2	3.8	83.4	0.836	0.805
30	CIS–9	Gas	196,000	4.4	5.0	88.7	0.882	0.869
31	1–85	Gas	202,300	4.4	5.1	86.3	0.864	0.817
32	1–86	Gas	200,400	4.4	5.1	86.3	0.859	0.826
33	1–87	Gas	186,500	4.3	4.8	83.9	0.838	0.816
34	1–88	Gas	195,700	4.3	5.0	80.8	0.809	0.640
35	1–89	Gas	142,900	3.2	3.6	84.6	0.842	0.792
36	1–90	Gas	188,500	4.0	4.6	85.3	0.847	0.824
37	1–100	Gas	197,400	4.3	5.5	83.8	0.826	0.818
38	1–101	Gas	141,800	3.1	3.6	83.1	0.831	0.816
39	1–77, 83, 84.	Gas	151,600	3.5	4.0	87.2	0.874	0.851
40	1–97	Gas	198,700	4.8	5.5	98.8	0.975	0.952
41	CIS–7	Gas	195,100	5.1	5.6	97.8	0.978	0.922
42	CIS–8	Gas	150,100	3.7	4.3	95.3	0.951	0.918
43	2–9	Gas	203,200	4.8	5.5	98.2	0.974	0.943
44	2–10	Gas	177,200	4.4	5.0	96.8	0.951	0.925
45	2–11	Gas	203,500	4.9	5.4	98.1	0.974	0.945
46	2–12	Gas	195,100	4.9	5.6	96.7	0.965	0.922
47	2–13	Gas	150,100	3.7	4.3	95.3	0.951	0.918
48	1–78	Gas	155,000	3.8	4.4	97.4	0.964	0.928
49	1–79	Gas	159,400	4.0	4.5	96.1	0.959	0.921
50	1–80	Gas	176,900	4.3	4.9	96.3	0.947	0.920
51	1–81	Gas	176,700	4.3	4.9	97.9	0.966	0.933
52	1–82	Gas	183,200	4.5	5.2	96.5	0.957	0.919
53	1–91	Gas	120,500	3.1	3.5	94.1	0.937	0.910
54	1–98	Gas	182,100	4.1	5.1	90.8	0.908	0.911
55	1–99	Gas	197,000	5.0	5.0	95.3	0.935	0.924
56	1–102	Gas	122,300	2.9	3.4	91.4	0.915	0.883
57	1–103	Gas	183,000	4.4	4.8	92.1	0.914	0.901
58	1–104	Gas	121,100	2.7	3.2	91.5	0.910	0.864

TABLE III.32—CONSUMER INSTANTANEOUS WATER HEATER ATTRIBUTES

CI No.	NO_X emission level	Condensing
1	Low	No.
2	Low	No.
3	Low	No.
4	Low	No.
5	Ultra-Low	No.
6	Ultra-Low	No.
7	Ultra-Low	No.

TABLE III.32—CONSUMER INSTANTANEOUS WATER HEATER ATTRIBUTES—Continued

CI No.	NO_X emission level	Condensing
8	Ultra-Low	No.
9	Ultra-Low	No.
10	Ultra-Low	No.
11	Ultra-Low	No.
12	Ultra-Low	Yes.
13	Ultra-Low	Yes.
14	Ultra-Low	Yes.
15	Ultra-Low	Yes.
16	Low	No.
17	Low	No.
18	N/A.	N/A.
19	N/A.	N/A.
20	N/A.	N/A.
21	N/A.	N/A.
22	N/A.	N/A.
23	Low	No.
24	Low	No.
25	Ultra-Low	No.
26	Ultra-Low	No.
27	Ultra-Low	No.
28	Ultra-Low	No.
29	Ultra-Low	No.
30	Ultra-Low	No.
31	Ultra-Low	No.
32	Ultra-Low	No.
33	Ultra-Low	No.
34	Ultra-Low	No.
35	Ultra-Low	No.
36	Ultra-Low	No.
37	Ultra-Low	No.
38	Ultra-Low	No.
39	Ultra-Low	No.
40	Low	Yes.
41	Ultra-Low	Yes.
42	Ultra-Low	Yes.
43	Ultra-Low	Yes.
44	Ultra-Low	Yes.
45	Ultra-Low	Yes.
46	Ultra-Low	Yes.
47	Ultra-Low	Yes.
48	Ultra-Low	Yes.
49	Ultra-Low	Yes.
50	Ultra-Low	Yes.
51	Ultra-Low	Yes.
52	Ultra-Low	Yes.
53	Ultra-Low	Yes.
54	Ultra-Low	Yes.
55	Ultra-Low	Yes.
56	Ultra-Low	Yes.
57	Ultra-Low	Yes.
58	Ultra-Low	Yes.

ii. Conversion Factor Results

As stated in section III.C.4.a, DOE developed an analytical model that DOE proposes to use to convert the prior measured values of maximum GPM rating for consumer instantaneous water heaters to measured values under the uniform efficiency descriptor test procedure. DOE also developed an analytical method to estimate the change in prior measured values of energy factor under the energy factor test procedure to measured values of uniform energy factor under the uniform efficiency descriptor test procedure. Along with this analytical model, step regression and combined analytical model-regression approaches were conducted. The results of the analytical model, step regression, and combined analytical model-regression approaches for the maximum GPM and UEF conversions are presented in Table III.34. For the maximum GPM conversions, the RMSD for the three approaches are 0.24, 0.23, and 0.23, respectively. For the UEF conversions, the three approaches have RMSD of 0.035, 0.028, and 0.027, respectively. DOE has decided to continue to propose to use the analytical model approach to calculate the consumer instantaneous maximum GPM conversion factor owing to the fact that the analytical model approach predicts the resultant data very closely and that it will broadly apply to those units not tested. DOE has also decided to continue to propose to use the combined analytical model-regression approach to convert from EF to UEF since the RMSDs are the lowest observed, and it has concluded that the use of the model and regression will capture key effects that may not be captured with either approach by itself. The resulting conversion factors for both maximum GPM and UEF are shown in Table III.33. In the equations in Table III.33, Max GPM_P is the maximum GPM based on the prior DOE test procedure and UEF_{model} is the predicted UEF determined using the analytical model, described in section III.C.4.c.

TABLE III.33—PROPOSED CONSUMER INSTANTANEOUS CONVERSION FACTOR EQUATIONS

Product class	Conversion factor
All Consumer Instantaneous.	New Max GPM = 1.1461 × Max GPM_P
Gas-fired Instantaneous.	New UEF = 0.1006 + 0.8622 × UEF_{model}
Electric Instantaneous.	New UEF = 0.9847 × UEF_{model}

TABLE III.34—CONSUMER INSTANTANEOUS CONVERSION FACTOR RESULTS

CI No.	Tested max GPM	Analytical max GPM	Regression max GPM	Combined Analytical-Regression Max GPM	Tested UEF	Analytical UEF	Regression UEF	Combined Analytical-Regression UEF
1	3.44	3.39	3.49	3.49	0.800	0.804	0.791	0.794
2	4.81	4.85	4.80	4.80	0.820	0.810	0.802	0.799
3	3.11	3.09	3.21	3.21	0.809	0.820	0.814	0.808
4	3.61	3.57	3.64	3.64	0.823	0.811	0.801	0.800
5	4.31	4.21	4.22	4.22	0.833	0.841	0.823	0.825
6	4.71	4.68	4.64	4.64	0.830	0.834	0.823	0.820
7	4.87	5.29	5.18	5.18	0.841	0.865	0.852	0.846
8	4.59	4.60	4.57	4.57	0.840	0.799	0.793	0.790
9	4.61	4.50	4.48	4.48	0.832	0.847	0.835	0.831
10	5.07	4.93	4.86	4.86	0.799	0.747	0.741	0.745
11	3.89	3.85	3.90	3.90	0.813	0.847	0.836	0.831
12	4.11	5.50	5.37	5.37	0.939	0.933	0.904	0.905
13	5.81	5.94	5.77	5.77	0.958	0.962	0.934	0.930
14	4.48	4.56	4.53	4.53	0.925	0.912	0.888	0.887
15	5.70	5.62	5.48	5.48	0.884	0.876	0.834	0.856
16	2.88	2.85	3.01	3.01	0.757	0.772	0.770	0.766
17	3.67	3.73	3.79	3.79	0.811	0.821	0.810	0.808
18	0.99	1.00	1.00	1.00	1.010	1.013	1.000	0.997
19	0.24	0.24	0.24	0.24	0.983	1.008	0.981	0.993
20	0.60	0.59	0.60	0.60	1.006	1.018	1.007	1.003
21	0.80	0.78	0.78	0.78	1.007	1.016	1.003	1.001

TABLE III.34—CONSUMER INSTANTANEOUS CONVERSION FACTOR RESULTS—Continued

CI No.	Tested max GPM	Analytical max GPM	Regression max GPM	Combined Analytical-Regression Max GPM	Tested UEF	Analytical UEF	Regression UEF	Combined Analytical-Regression UEF
22	0.93	0.94	0.94	0.94	0.982	1.011	0.997	0.996
23	4.50	4.61	4.57	4.57	0.809	0.798	0.785	0.789
24	4.40	4.57	4.54	4.54	0.815	0.826	0.804	0.813
25	3.56	3.55	3.63	3.63	0.812	0.830	0.818	0.817
26	4.95	4.97	4.90	4.90	0.843	0.846	0.829	0.830
27	3.94	3.93	3.97	3.97	0.806	0.842	0.829	0.827
28	5.10	5.00	4.92	4.92	0.869	0.913	0.890	0.888
29	3.80	3.67	3.73	3.73	0.805	0.828	0.821	0.814
30	5.05	4.99	4.91	4.91	0.869	0.883	0.861	0.862
31	5.14	5.06	4.98	4.98	0.817	0.859	0.845	0.841
32	5.07	5.01	4.93	4.93	0.826	0.859	0.841	0.841
33	4.84	4.92	4.85	4.85	0.816	0.835	0.823	0.821
34	4.96	4.93	4.86	4.86	0.640	0.804	0.798	0.794
35	3.63	3.64	3.71	3.71	0.792	0.840	0.827	0.825
36	4.57	4.63	4.59	4.59	0.824	0.849	0.831	0.833
37	5.52	4.93	4.86	4.86	0.818	0.834	0.813	0.820
38	3.62	3.50	3.58	3.58	0.816	0.825	0.817	0.812
39	4.00	3.96	4.00	4.00	0.851	0.868	0.855	0.849
40	5.54	5.47	5.34	5.34	0.952	0.983	0.941	0.948
41	5.60	5.85	5.68	5.68	0.922	0.973	0.944	0.939
42	4.30	4.24	4.25	4.25	0.918	0.948	0.921	0.918
43	5.50	5.50	5.37	5.37	0.943	0.977	0.941	0.943
44	5.00	5.04	4.96	4.96	0.925	0.963	0.921	0.931
45	5.40	5.62	5.48	5.48	0.945	0.976	0.941	0.942
46	5.60	5.62	5.48	5.48	0.922	0.962	0.933	0.930
47	4.30	4.24	4.25	4.25	0.918	0.948	0.921	0.918
48	4.36	4.34	4.34	4.34	0.928	0.969	0.932	0.936
49	4.52	4.54	4.51	4.51	0.921	0.956	0.928	0.925
50	4.94	4.92	4.85	4.85	0.920	0.958	0.917	0.926
51	4.92	4.91	4.84	4.84	0.933	0.974	0.934	0.940
52	5.18	5.20	5.11	5.11	0.919	0.960	0.926	0.928
53	3.50	3.54	3.62	3.62	0.910	0.934	0.909	0.906
54	5.10	4.74	4.70	4.70	0.911	0.904	0.884	0.880
55	5.05	5.74	5.59	5.59	0.924	0.948	0.907	0.918
56	3.37	3.30	3.41	3.41	0.883	0.907	0.890	0.882
57	4.80	5.04	4.96	4.96	0.901	0.917	0.889	0.891
58	3.20	3.09	3.22	3.22	0.864	0.908	0.885	0.883

In response to the April 2015 NOPR, AHRI commented that for gas-fired instantaneous water heaters tested by DOE, most condensing units had measured UEFs that were greater than the EF, but the calculated UEF using the mathematical conversion for these units in all cases was less than the tested UEF. (AHRI, No. 13 at p. 6) NEEA commented that the UEF rating comparison results are so scattered as to strongly suggest that there are factors, which differ from one water heater to another, missing from the current analytical approach, or that one or more of DOE's assumptions or approximations used in the analytical approach are not valid for every water heater. NEEA suggested that a likely source of error may be in the methods used to estimate the amount of energy absorbed by the water heater in any given firing cycle, or the related estimates of the impact of the time between firing cycles on this factor. NEEA also commented that the conversion for gas-fired instantaneous water heaters consistently underrates the UEF of condensing water heaters and seems unable to predict reliably the measured UEF of any non-condensing models. (NEEA, No. 15 at p. 6)

In response, DOE notes that the relationship between measured UEF and EF is not a result of the conversion, but rather how water heaters are performing when tested to the UEF test procedure. In the set of data used for this rulemaking, DOE observes that 19 of the 23 condensing units have a measured UEF less than the measured EF. AHRI and NEEA commented that the conversion for condensing gas-fired instantaneous water heaters underrates the UEF. DOE notes that with the new test data and conversion factors, 7 of the condensing units have converted UEFs greater than the measured, 9 are less than, and 7 are equal to, after rounding to the second decimal place, suggesting that the proposed conversion factor contained in this SNOPR is overall, a more accurate fit to the test data than the conversion factor proposed in the NOPR. Further, the RMSD values for the NOPR and SNOPR conversions for the current set of condensing units are 0.063 and 0.017, respectively. These results indicate that the SNOPR conversion factors are better predictors of actual performance. Regarding NEEA's statement that the conversion is unable to predict reliably the measured UEF of non-condensing models, DOE notes that the RMSD value is 0.034 when applied for just non-condensing units, as compared to the RMSD value of 0.017 when applied to just condensing units, which indicates that the conversion equation for gas-fired instantaneous water heaters does fit the non-condensing data points almost as well as it fits the condensing data points. However, DOE notes that the new conversion equation for non-condensing gas-fired instantaneous water heaters produced converted UEF values above the measured UEF values for 11 units, below the measured UEF values for 11 units, and equal to for 8 units, when rounded to the second decimal place, suggesting the conversion is representing the non-condensing category as well as can be expected, given the variance in the non-condensing test data, and is not skewed toward over- or under-predicting the UEF of these units. Further, when separate conversion equations are derived for condensing and non-condensing gas-fired instantaneous water heaters, the RMSD values for non-condensing and condensing instantaneous water heaters only improve by 0.003 and 0.001, respectively. DOE has tentatively determined that this improvement is negligible when weighed against the added complexity of an additional conversion factor. As stated in section III.E.1, DOE tentatively considers a change in RMSD to be negligible if it is less than one unit (0.01 for EF and UEF, 0.1 for maximum GPM, and 1.0 for first-hour rating). In this case, 0.003 and 0.001 are less than 0.01 and would be unlikely to have a noticeable effect when UEF is rounded to the nearest 0.01 per the reporting requirements in 10 CFR 429.17. NEEA's suggestions about improving the instantaneous analytical conversion were previously discussed in section III.C.4.c of this notice.

c. Residential-Duty Commercial Storage Water Heaters

i. Test Results

DOE has tested 8 residential-duty commercial storage water heaters to both the thermal efficiency and standby loss and UEF test procedures, and AHRI has supplied test data for 12 additional units of this kind of water heater.[15] Table III.35 below presents the test data used to derive the residential-duty commercial storage water heater conversion factors. Table III.36 shows the water heater attributes by unit described in section III.E.1.

TABLE III.35—RESIDENTIAL-DUTY COMMERCIAL WATER HEATER TEST DATA

RDS No	AHRI No	Type	Storage volume (gal)	Input rate (Btu/h)	Thermal efficiency (%)	Standby loss (Btu/h)	Updated FHR (gal)	UEF
1	N/A	Gas	72.9	75,600	74.1	1007.0	107.4	0.612
2	N/A	Gas	48.3	76,500	93.6	328.0	137.0	0.816
3	N/A	Gas	93.7	78,900	80.4	1178.2	109.8	0.514
4	N/A	Gas	70.9	76,900	82.8	580.2	156.4	0.710
5	N/A	Gas	94.9	83,700	80.0	1389.9	159.2	0.524
6	N/A	Gas	69.6	75,600	76.9	1407.2	130.0	0.505
7	N/A	Oil	50.3	140,000	76.7	908.2	134.8	0.617
8	N/A	Gas	48.4	75,500	89.5	348.3	114.9	0.722
9	1–105	Gas	93.1	75,200	80.1	1163.3	140.9	0.561
10	2–14	Gas	49.0	76,800	97.3	150.0	151.1	0.908
11	2–15	Gas	49.0	76,800	97.3	150.0	156.8	0.891
12	1–122	Gas	71.3	79,600	82.7	789.0	131.0	0.650
13	1–120	Gas	49.0	76,800	97.3	150.0	154.0	0.907
14	1–114, 115.	Gas	48.3	75,100	92.6	290.5	119.1	0.877
15	1–106, 107.	Gas	70.8	74,600	80.0	1052.0	113.8	0.625
16	1–110, 111.	Gas	71.1	75,100	81.0	921.0	107.6	0.642
17	1–108, 109.	Gas	95.0	74,000	80.5	1064.5	140.0	0.596
18	1–112, 113.	Gas	94.9	74,700	81.5	1063.0	125.9	0.587
19	1–116, 117.	Gas	49.4	101,300	96.5	422.5	109.9	0.865
20	1–118, 119.	Gas	74.2	101,400	96.0	408.5	174.0	0.842

TABLE III.36—RESIDENTIAL-DUTY COMMERCIAL WATER HEATER ATTRIBUTES

RDS No	NO_X Emission level	Condensing	Vent type	Short or Tall	Standing Pilot?
1	Low	No	Power	Tall	Yes.
2	Low	Yes.	Power	Short	No
3	Standard	No	Atmospheric	Tall	Yes.
4	Standard	No	Power	Tall	No
5	Ultra-Low	No	Atmospheric	Not Specified	Yes.
6	Ultra-Low	No	Atmospheric	Tall	Yes.
7	N/A.	N/A.	N/A.	Short	N/A.
8	Low	Yes.	Power	Tall	No
9	Low	No	Atmospheric	Tall	Yes.
10	Low	Yes.	Power	Not Specified	No
11	Low	Yes.	Power	Not Specified	No
12	Low	Yes.	Power	Tall	No
13	Not Specified	Yes.	Power	Not Specified	No

---

[15] If multiple tests were conducted on either the same unit or same basic model of a water heater, the results were averaged to produce the values reported in this SNOPR.

TABLE III.36—RESIDENTIAL-DUTY COMMERCIAL WATER HEATER ATTRIBUTES—Continued

RDS No	NO_X Emission level	Condensing	Vent type	Short or Tall	Standing Pilot?
14	Low	Yes.	Power	Tall	No
15	Standard	No	Atmospheric	Tall	Yes.
16	Standard	No	Atmospheric	Tall	Yes.
17	Ultra-Low	No	Atmospheric	Tall	Yes.
18	Ultra-Low	No	Atmospheric	Tall	Yes.
19	Ultra-Low	Yes.	Power	Tall	No
20	Ultra-Low	Yes.	Power	Tall	No

ii. Conversion Factor Results

As stated in section III.C.4.b, DOE is not aware of an analytical model to convert the represented values of thermal efficiency and standby loss under the prior commercial test procedure to estimate the represented value of first-hour rating under the new test procedure. Therefore, DOE proposes to use the step regression method described in section III.C.2 along with the best combination of water heater attributes to determine the first-hour rating conversion factor shown in Table III.37. The next step in the conversion is to determine which draw pattern is to be applied to convert to UEF. After the first-hour rating under the uniform efficiency descriptor is determined through the conversion factor, the value can be applied to determine the appropriate draw pattern bin (*i.e.*, very small, low, medium, or high) using Table 1 of the uniform efficiency descriptor test procedure. 10 CFR 430, subpart B, appendix E, section 5.4.1. With the draw bin known, the UEF value based on the analytical model can be calculated using the process described in section III.C.4 of this document. The analytical results, along with the results of the step regression and the analytical regression, are presented in Table III.38 and have RMSD values of 0.032, 0.029, and 0.032, respectively. DOE proposes to use the combined analytical-regression approach to calculate the residential-duty commercial storage water heater conversion factor because the RMSD value is within 0.003 of that of the regression and the use of the analytical portion of the conversion will likely apply better to units that have not been tested. The resulting equations for determining the UEF of residential-duty commercial storage water heaters are presented in Table III.37. In the equations in Table III.37, V_r is the rated volume, and E_t is the thermal efficiency in fractional form (*e.g.*, 0.85 instead of 85 (%)). UEF_{rd} is the result of the analytical conversion, described in section III.C.4.c. For these regressions, DOE decided to group both oil-fired and gas-fired water heaters because of the lack of oil-fired water heaters identified.

TABLE III.37—PROPOSED RESIDENTIAL-DUTY COMMERCIAL STORAGE CONVERSION FACTOR EQUATIONS

Product class	Conversion factor
All Residential-Duty Commercial Storage Water Heaters.	New FHR = $-35.8233 + 0.4649 \times V_r + 160.5089 \times E_t$ New UEF = $-0.0022 + 1.0002 \times UEF_{rd}$

TABLE III.38—RESIDENTIAL-DUTY COMMERCIAL STORAGE CONVERSION RESULTS

RDS No.	Tested FHR (gal)	Regression FHR (gal)	Tested UEF	Analytical UEF	Regression UEF	Analytical-Regression UEF
1	107.4	117.0	0.612	0.567	0.559	0.565
2	137.0	136.9	0.816	0.830	0.831	0.828
3	109.8	136.8	0.514	0.578	0.567	0.576
4	156.4	130.1	0.710	0.691	0.700	0.689
5	159.2	136.7	0.524	0.548	0.527	0.546
6	130.0	120.0	0.505	0.532	0.509	0.530
7	134.8	110.7	0.617	0.594	0.626	0.592
8	114.9	130.3	0.722	0.793	0.798	0.790
9	140.9	136.0	0.561	0.579	0.566	0.577
10	151.1	143.2	0.908	0.918	0.890	0.916
11	156.8	143.2	0.891	0.918	0.890	0.916
12	131.0	130.1	0.650	0.651	0.662	0.649
13	154.0	143.2	0.907	0.918	0.890	0.916
14	119.1	135.2	0.877	0.833	0.830	0.831
15	113.8	125.5	0.625	0.594	0.594	0.592
16	107.6	127.3	0.642	0.620	0.625	0.617
17	140.0	137.5	0.596	0.595	0.585	0.593
18	125.9	139.1	0.587	0.601	0.593	0.599
19	109.9	142.0	0.865	0.825	0.843	0.823
20	174.0	152.8	0.842	0.825	0.832	0.823

In response to the NOPR, AHRI stated that for gas-fired residential-duty commercial storage water heaters, all the measured UEF results are higher than the converted UEF values using the mathematical conversion, and the commenters added that the magnitude of the difference seems to track with the volume and thermal efficiency of the water heater. (AHRI, No. 6 at p. 2) Bradford White stated that its results show that both the UEF and FHR are largely underestimated for residential-duty commercial gas-fired water heaters when using the conversion factors.

(Bradford White, No. 14 at p. 2) NEEA stated that for residential-duty commercial water heaters, there is so little correlation between the FHR and UEF calculated from the mathematical conversions and the measured values from testing that it is not possible at this point to use an analytical approach for determining either of these values. (NEEA, No. 15 at p. 6) NEEA elaborated that it is also not clear at this point that more testing (more sample models) would be helpful, as NEEA believes there are some missing variables/factors that are not being taken into account in the analytical methodologies. NEEA tentatively concluded that these water heaters will have to be tested in the near term in order to produce represented values of FHR and UEF that will match the represented values later when all water heaters must be re-certified based on tested values. (NEEA, No. 15 at p. 6)

In response to AHRI and Bradford White's comment about the gas-fired storage conversion underrating the UEF, DOE notes that under the conversion factor proposed in this SNOPR, there are a similar number of gas-fired residential-duty commercial units where the converted UEF is either higher or lower than the measured UEF,[16] which suggests that the new conversion is a better representation of the test data than was proposed in the NOPR. Further, the RMSD values for the NOPR and SNOPR conversions with the current data set are 0.068 and 0.032, respectively. In response to NEEA comments, DOE notes that the analytical method was updated based on other commenters' suggestions, and that the resulting new conversion tracks better with the measured data than the conversion factor equation proposed in the NOPR.

d. Residential-Duty Commercial Instantaneous Water Heaters

As discussed in section III.B, DOE did not propose a mathematical conversion for residential-duty commercial gas-fired instantaneous water heaters in the April 2015 NOPR. The definition of residential-duty commercial water heater applies to commercial equipment and specifically excludes gas-fired instantaneous water heaters with an input rating above 200,000 Btu/h. 10 CFR 431.102. As defined in EPCA, gas-fired instantaneous water heaters with an input rating at or below 200,000 Btu/h are consumer products, not commercial equipment. (42 U.S.C. 6291(27)(B)) As such, the definition of residential-duty commercial water heater definition precludes all gas-fired instantaneous water heaters from being so defined.

DOE has tentatively concluded a mathematical conversion factor and standard denominated in UEF are necessary for residential-duty commercial electric instantaneous water heaters. DOE tested 1 residential-duty commercial electric instantaneous water heater to the test procedure that was proposed in the UEF test procedure NOPR. 78 FR 66202 (Nov. 4, 2013). The maximum GPM conversion is based on a regression, and DOE included this data point for the residential-duty commercial electric instantaneous unit in that conversion without the need for further testing, because there were no substantial changes to the maximum GPM test for electric instantaneous water heaters between the UEF test procedure NOPR and final rule. Because of the small amount of data available and the relative similarity between units above and below the 12 kW cut-off between consumer and residential-duty commercial water heaters, DOE also used the 5 consumer electric instantaneous water heaters that were tested (see section III.E.2.b) in the development of the mathematical conversion factor for the maximum GPM of residential-duty commercial electric instantaneous water heaters. Table III.39 below presents the residential-duty commercial electric instantaneous water heater test data used to develop the conversion factors.

TABLE III.39—RESIDENTIAL-DUTY COMMERCIAL INSTANTANEOUS WATER HEATER TEST DATA

RDI No.	Input rate (Btu/h)	Updated max GPM	UEF
1	83,600	2.48	0.948

DOE examined potential parameters for predicting the maximum GPM rating of residential-duty commercial electric instantaneous water heaters. Given the *de minimis* losses from electric heating elements, and the *de minimis* standby losses associated with tankless water heaters, DOE believes that it is appropriate to assume that the delivery capacity would be heavily dependent on the input rating for electric instantaneous water heaters. DOE examined the predicted maximum GPM as a function of input rate, and developed an equation which results in an RMSD of 0.009 gpm. DOE proposes to use the following equation as the mathematical conversion factor for max GPM, where Q is input rate in kBtu/h.

$$New\ Max\ GPM = 0.0146 + 0.0295 * Q$$

DOE has tentatively determined that the UEF value shown in Table III.39, which is a result of the UEF test procedure NOPR is not appropriate for use in a regression based conversion. As described in section III.C.4.c.iv, DOE has proposed an analytical method for determining the UEF conversion, and as such, this test point was not necessary to develop the UEF conversion. DOE proposes to use the analytical method described in section III.C.4.c.iv as the conversion for residential-duty commercial electric instantaneous water heaters.

e. Grid-Enabled Storage Water Heaters

Grid-enabled water heaters have a rated storage volume above 75 gallons and use electric resistance elements to heat the stored water. At the time of its analysis for this notice, DOE was unable to find grid-enabled water heaters available on the market which meet the definition of "grid-enabled water heater"[17] as set forth in EEIA 2015. As a result, DOE does not have any test data for grid-enabled water heaters specifically. However, DOE does have a large set of data for electric resistance storage water heaters, which DOE believes would have similar energy consumption-related characteristics to grid-enabled water heaters, aside from the differences in stored volume. DOE has conducted testing of 18 consumer electric storage water heaters, which use electric resistance elements and were tested to both the EF and UEF test procedures, and AHRI has supplied test data for 27 additional units of this water heater type. DOE believes that the electric resistance technology used in grid-enabled water heaters to heat water would be similar enough to the technology used in the less than or equal to 55 gallon class of consumer electric water heaters to be applicable in the derivation of the grid-enabled conversion and energy conservation standard derivation. Similarly, the insulation type and thickness in grid-enabled water heaters is expected to be the same as that currently used in electric storage water heaters with storage volumes less than or equal to 55 gallons. Therefore, DOE used the same test data to derive the grid-enabled consumer storage water heater conversion factors as was used to derive the consumer electric storage water heater conversion factor.

---

[16] Of the 20 residential-duty commercial units tested, 9 had a UEF value predicted by the conversion equation that was lower than the measured UEF; 7 units had a predicted UEF that was higher than the measured UEF, and 4 units had a predicted UEF that was equal to the measured UEF, after rounding to the second decimal place.

[17] Grid-enabled water heater means an electric resistance water heater that—

(1) Has a rated storage tank volume of more than 75 gallons;

(2) Is manufactured on or after April 16, 2015;

(3) has: (i) An energy factor of not less than 1.061 minus the product obtained by multiplying—(a) the rated storage volume of the tank, expressed in gallons, and (b) 0.00168; or (2) an equivalent alternative standard prescribed by the Secretary and developed pursuant to 42 U.S.C. 6295(e)(5)(E);

(4) Is equipped at the point of manufacture with an activation lock and;

(5) Bears a permanent label applied by the manufacturer that—

(i) Is made of material not adversely affected by water;

(ii) Is attached by means of non-water-soluble adhesive; and

(iii) Advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font: "IMPORTANT INFORMATION: This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product."

(42 U.S.C. 6295(e)(6)(A)(ii))

For the first-hour rating conversion, the only conversion method available is the regression approach. Therefore, the data set of electric resistance consumer electric storage water heaters was used to derive the following equation:

$$\text{New FHR} = 9.2827 + 0.8092 \times \text{FHR}_P$$

As with electric storage water heaters with storage volumes less than 55 gallons, DOE used the hybrid approach of using both the WHAM equation and a regression to calculate the UEF. Because no grid-enabled water heater products are available on the market, DOE applied the regression equations derived using the electric storage water heaters with storage volumes less than 55 gallons since the technology employed is very similar. DOE is proposing to use the following conversion equations to determine the UEF (shown as "New UEF" in the equation):

$$UEF_{WHAM} = \left[\frac{1}{\eta_r} + \left(\frac{1}{EF} - \frac{1}{\eta_r}\right)\left(\frac{a\,P\,\eta_r - b}{c\,P\,\eta_r - d}\right)\right]^{-1}$$

$$\text{New UEF} = 0.4474 + 0.4740 \text{ x } \text{UEF}_{\text{WHAM}}$$

DOE considered simply using the WHAM equation for the conversion of grid-enabled water heaters, but the inclusion of the regression step makes the corresponding energy conservation standards (discussed in III.E.3) more consistent with those developed for electric storage water heaters with storage volumes at or below 55 gallons, which DOE believes are very similar products at lower storage volumes. DOE seeks comment on its method of applying the regression for electric storage water heaters with storage volumes at or below 55 gallons in developing the conversion equation for grid-enabled water heaters. This is identified as issue 1 in section V.B, "Issues on Which DOE Seeks Comment."

3. Energy Conservation Standard Derivation

After developing the mathematical conversion factors to convert from the prior tested values under the EF metric to the tested values under the UEF metric, the next step is to translate the energy conservation standards to be in terms of UEF. In the April 2015 NOPR analysis, DOE investigated several possible methods to determine the appropriate energy conservation standards in terms of UEF, and sought comments on the various approaches. 80 FR 20116, 20136–38 (April 14, 2015). DOE ultimately proposed using the "percent difference" method, which would have updated the minimum standards by first calculating the percent difference between the prior EF rating and standard for each model on the market, and then applying that percent difference to the estimated UEF (based on the conversion factor) to determine the new minimum UEF requirement that maintains the same stringency. However, because the "percent difference" method was based on actual water heaters from the CCMS and AHRI directories, the method could only directly be applied to categories that had water heaters in them. Thus, DOE had to extrapolate standards from similar classes for categories where there were no models on the market, such as the consumer gas-fired storage water heaters greater than 55 gallons category. For this SNOPR, DOE has developed a new methodology that it proposes for translating the energy conservation standards to UEF, which DOE believes would improve the results of the standards translation. DOE has termed this new approach as the "representative model" method, which consists of the following steps for determining the minimum UEF standard:

1. Using the CCMS and AHRI directories, for minimally-compliant models, determine the unique rated storage volumes available on the market prior to July 13, 2015 (the date on which DOE's requirement that rated storage volume equal the mean of the measured storage volume was effective; see section III.E.3.a).

2. For each rated storage volume identified in step 1, find average values of conversion factor inputs (*i.e.,* input rating and recovery efficiency for consumer water heaters (except consumer heat pump water heaters), and input rating for residential-duty commercial water heaters) for minimally-compliant models in each product class. (For product classes where no minimally-compliant models exist on the market, DOE used other methods to estimate the characteristics of minimally-compliant models, as discussed in detail subsequently.)

3. Calculate the energy conservation standard (in terms of EF for consumer water heaters and TE/SL for residential-duty commercial water heaters (with input rate for determining standards found from step 2)) for each product class based on the rated storage volume, as reported in the CCMS and AHRI directories at the time of this analysis (before DOE's requirement that rated storage volume equal the mean of the measured storage volume was effective).

4. Using applicable average values for conversion factor inputs determined in step 2 and the applicable minimum energy conservation standards calculated in step 3, calculate the equivalent UEF for minimally-compliant models at each discrete rated storage volume (determined in step 1) using the appropriate conversion factor for the product class.

5. Adjust the rated storage volumes to estimate the rated storage volume that would reflect DOE's requirement at 10 CFR 429.17(a)(1)(ii)(C) that rated storage volume equal the mean of the measured storage volume of all units within the sample. DOE estimated that for electric storage water heaters, the rated storage volume would decrease by 10 percent, and for gas-fired and oil-fired water

heaters, the rated storage volume would decrease by 5 percent.

6. For each product class and draw pattern, using a simple regression, find the slope and intercept where the independent variable is the range of adjusted rated storage volumes (determined in step 5) and the dependent variable is the UEF values associated with the rated storage volumes and specific draw pattern calculated in step 4.

As discussed in section III.B, the energy conservation standards for water heaters established in EPCA (and for electric water heaters, the standards as adjusted by the 1990 test procedure final rule) apply to all consumer water heaters regardless of storage volume or input rate. Therefore, in addition to the classes of water heaters for which DOE proposed UEF-based standards in the NOPR, DOE is also proposing updated standards based on the UEF test procedure for the types of water heaters described in Table III.1.[18] Although there were few or no water heaters in those categories described in Table III.I, DOE used the "representative model" method described previously by estimating values for input rate and recovery efficiency to determine the converted UEF standard level.

For consumer gas-fired storage water heaters, there are three separate conversion factors: (1) For standard (*i.e.,* not low NO_X or ultra-low NO_X) and low NO_X non-condensing models; (2) for ultra-low NO_X non-condensing models; and (3) for condensing models. For water heaters with a storage volume less than or equal to 55 gallons, the conversion factor for standard and low NO_X non-condensing models was used to develop the proposed updated energy conservation standard, as the standard for gas-fired storage water heaters with a storage volume less than or equal to 55 gallons is at a non-condensing level. DOE chose to use the equation for standard and low NO_X non-condensing models, rather than for ultra-low NO_X non-condensing models, since standard and low NO_X non-condensing models make up the majority of the gas-fired storage water heater market. DOE considered proposing to establish separate standards for ultra-low NO_X models based on the conversion factor for these products, but found that the slight differences in the resultant standards for ultra-low-NO_X water heaters would not justify the additional complexity in the Department's water heater regulations if separate standards were to be developed. The average difference between the standard and low-NO_X and ultra-low-NO_X energy conservation standards for the very small, low, medium, and high draw patterns, was −0.041, −0.008, −0.006, and 0.003, respectively.[19] Manufacturers are required to certify UEF values rounded to the nearest 0.01 (10 CFR 429.17(b)(2)), so differences lower than that would effectively result in the same standard level for the majority of units on the market. The very small draw pattern standard would not be expected to have a negligible difference; however, DOE is not aware of any units that are on the market which would test to this draw pattern. DOE did not consider using the condensing gas-fired storage conversion for units less than or equal to 55 gallons because the resulting standard would be much more stringent than the current energy conservation standards. DOE seeks comments on the use of the standard and low-NO_X conversion to calculate the energy conservation standard for consumer gas-fired storage water heaters less than or equal to 55 gallons, and its tentative decision not to propose separate standards for ultra-low NO_X gas-fired storage water heaters. This is identified as issue 2 in section V.B, "Issues on Which DOE Seeks Comment."

For consumer gas-fired storage water heaters above 55 gallons, there are no water heaters on the market; therefore, DOE assumed the input rate to be 65 kBtu/h and the recovery efficiency to be 0.90 when performing the conversion to UEF for translating the standard. The input rate of 65 kBtu/h was determined based on listings available in the AHRI Directory at the time of this analysis. DOE examined all models listed in the AHRI Directory (including those marked as discontinued or obsolete) and determined that the median input rate of gas-fired storage water heaters above 55 gallons is 65 kBtu/h, which is also the most frequently occurring input rate. DOE used 0.90 as the recovery efficiency based on the recovery efficiency of the only two condensing consumer water heater models that DOE has identified on the market (both of which have storage volume below 55 gallons). DOE used these values along with the conversion factor for condensing gas-fired storage water heaters to derive the above 55-gallon energy conservation standard. DOE seeks comments from stakeholders regarding its assumptions for the typical input rating and recovery efficiency of consumer gas-fired storage water heaters above 55 gallons. This is identified as issue 3 in section V.B, "Issues on Which DOE Seeks Comment."

In the consumer electric instantaneous water heaters product class, there are no minimally-compliant models available on the market. Therefore, DOE estimated the recovery efficiency for minimally compliant models in order to perform the calculations required to convert the standard. The recovery efficiency of models available on the market is 0.98, while the average EF available on the market was 0.99. Given the similarity of the EF rating and recovery efficiency observed in electric instantaneous models, DOE estimated the recovery efficiency of minimally-compliant models as being equal to the EF (which at the minimally-compliant level is 0.93). DOE recognizes, however, that it is unlikely that a model using electric resistance elements would have a recovery efficiency of 0.93, but rather, it is more likely that the recovery efficiency of a minimally compliant model would be maintained at 0.98 while additional standby losses or cycling losses would result in a lower EF. Given the design of products currently on the market (upon which the conversion factor is based), both cycling and standby losses are minimal, and as a result, the conversion factor is based almost entirely on recovery efficiency. Therefore, DOE approximated a reduction in cycling and standby losses by lowering recovery efficiency such that the overall converted UEF would be lowered, in order to keep the converted standard at an equivalent level; without this reduction, the resulting standard level would be set much closer to the level of performance of current models, which would represent an increase in stringency. DOE seeks comment on this approach for estimating the recovery efficiency of a minimally-compliant (*i.e.,* 0.93 EF) electric instantaneous water heater. This is identified as issue 4 in section V.B, "Issues on Which DOE Seeks Comment." The current DOE-prescribed energy conservation standard for electric instantaneous water heaters at 10 CFR 430.32(d) is at the same level as those set forth in EPCA (42 U.S.C. 6295(e)(1)(C)) and shown in Table I.1. These standards are not limited by storage volume, and, therefore, DOE has tentatively decided to propose one set of standard equations for all storage volumes of consumer electric instantaneous water heaters (0 to 10.24 gallons).[20] To derive the updated energy conservation standards for consumer electric instantaneous water heaters below 2 gallons, the instantaneous conversion was used, and for units at or above 2 gallons, the storage conversion was used. DOE believes the use of the storage conversion factor for representative units at or above 2 gallons is more appropriate given the greater standby losses which would occur during the tests of these units. DOE notes that the instantaneous conversion estimates cycling losses for instantaneous water heaters and that the storage conversion estimates standby losses. Average input rates for units on the market were used for below 2 gallons units, and an input rate of 12 kW was assumed for all at or above 2 gallons units.

---

[18] These water heaters include gas-fired storage, electric storage, and tabletop water heaters at or above 2 gallons storage volume and below 20 gallons storage volume; gas-fired storage water heaters above 100 gallons storage volume; oil-fired storage water heaters above 50 gallons storage volume; electric storage water heaters above 120 gallons storage volume; gas-fired instantaneous water heaters with an input at or below 50,000 Btu/h or at or above 2 gallons storage volume; electric instantaneous water heaters at or above 2 gallons storage volume; and oil-fired electric instantaneous water heaters.

[19] Averages differences are calculated using storage volumes from 20 to 55 gallons, in increments of 1 gallon, where the minimum UEF values have been rounded to the nearest 0.01.

For grid-enabled storage water heaters, there were no minimally-compliant models available on the market at the time of analysis, so DOE assumed representative volumes of 75 and 120 gallons and input rates of 4.5 kW at both volumes.

For consumer electric storage water heaters below 20 gallons, DOE found that there were units on the market, but these units were not reported in the AHRI or CCMS databases. DOE searched through manufacturers' product literature to compile a list of units with their respective storage volumes and input rates. At each rated storage volume, the associated input rates were averaged to obtain a representative value. For consumer electric storage water heaters above 120 gallons, DOE found that there were no units on the market. Therefore, DOE assumed representative rated storage volumes of 121 gallons and 705 gallons. The upper bound of 705 gallons is the point at which the applicable EPCA standard, found in Table I.1, would be zero. The recovery efficiency is assumed to be 98 percent for all water heaters using submerged electric resistance heating elements, and the input rate for units with a capacity above 120 gallons is assumed to be 12 kW (*i.e.,* the maximum allowable input capacity in the consumer electric water heater class).

For consumer tabletop water heaters with storage volumes below 20 gallons or above 120 gallons, the current DOE-prescribed energy conservation standards are at the same level as those prescribed in the EPCA standards, found in Table I.1. Therefore, DOE tentatively proposes to extend the updated energy conservation standards derived for units between 20 and 120 gallons to all tabletop units, regardless of storage volume.

For consumer gas-fired storage water heaters, less than 20 gallons and greater than 100 gallons, DOE found that there were no units currently on the market. Therefore, DOE assumed that if such models were to exist in the less than 20 gallon size, they would have a similar representative storage volume as for consumer electric storage water heaters less than 20 gallons, and used those values as representative storage volumes. For storage volumes above 100 gallons, DOE used representative storage volumes of 101 and 326 gallons which represent the lower and upper bounds, respectively. The upper bound of 326 gallons is the point at which the applicable EPCA standard, found in Table I.1, would be zero, and DOE used this as the upper bound for storage capacity. The recovery efficiency for all units is assumed to be the average of the recovery efficiencies available for minimally compliant units between 20 and 55 gallons, which was found to be 79 percent. DOE observed in the AHRI and CCMS databases that there was one consumer gas-fired storage water heater at 20 gallons, which had an input rate of 75,000 Btu/h. This suggests that the design of consumer gas-fired storage water heaters below 20 gallons would trend towards higher input rates. Therefore, DOE assumed input rates for units below 20 gallons to be at the 4,000 Btu/h/gal limitation between storage and instantaneous water heaters, which is the maximum input allowable to be within the gas-fired storage water heater product class for a given volume. (42 U.S.C. 6291(27)(B)) An input rate of 75,000 Btu/h was used for storage volumes where the input rate using the 4,000 Btu/h/gal limitation would result in a value greater than 75,000 Btu/h, as that is the maximum input capacity for consumer gas-fired storage water heaters. For consumer gas-fired storage water heaters with greater than 100 gallons storage volume, the input rate was assumed to be 75,000 Btu/h.

For consumer oil-fired storage water heaters with a capacity above 50 gallons, recovery efficiency and input rate values are assumed to be 85 percent and 105,000 Btu/h, respectively.

For consumer oil-fired instantaneous water heaters, the maximum possible input rate as defined by EPCA at 42 U.S.C. 6291(27)(B) is 210,000 Btu/h. This input rate corresponds to a maximum storage volume of 52.5 gallons (based on the 4,000 Btu/h per gallon of stored water limitation between instantaneous and storage water heaters). Due to the large storage volumes that are possible in this class of water heater, the consumer oil-fired storage conversion was used to derive the updated UEF standards. The average storage volume, input rate, and recovery efficiency for units on the market is 5 gallons, 148,000 Btu/h, and 88 percent, respectively. Therefore, DOE used the representative market average data point along with the largest possible storage volume and input rate to determine the energy conservation standards equation in terms of UEF. A recovery efficiency of 88 percent was also used for the 52.5 gallon data point.

For consumer gas-fired instantaneous water heaters the current DOE-prescribed energy conservation standards (as amended in the April 2010 final rule and with which compliance was required in April 2015) cover models with: (1) Storage volumes below 2 gallons or (2) an input rate above 50,000 Btu/h. All other consumer gas-fired instantaneous water heaters would be subject to the standards initially established by EPCA shown in Table I.1. These two attributes are not mutually exclusive; that is, a unit could exist that has a rated storage volume at or above 2 gallons and an input rate at or below 50,000 Btu/h. DOE considered proposing a separate set of standards for each unique storage volume and input rate combination (*e.g.,* above 50,000 Btu/h and at or above 2 gallons, at or below 50,000 Btu/h and below 2 gallons, or at or below 50,000 Btu/h and at or above 2 gallons), or proposing a single standard that would cover all consumer gas-fired instantaneous water heaters with storage volume at or above 2 gallons, or input rate at or below 50,000 Btu/h. Over the range of applicable storage volumes, the methods produce UEF values that are within 0.01 of each other. Therefore, to reduce the complexity of its standards for water heaters, DOE proposes to use a single set of standard equations for consumer gas-fired instantaneous water heaters with rated storage volumes at or above 2 gallons or input rates at or below 50,000 Btu/h. Representative storage volumes of 0, 2, 12.5, and 50 gallons were used to derive the updated standards. These storage volumes represent various key points. The storage volumes 0 gallons and 12.5 gallons represent the bounds of instantaneous water heaters with an input rate at or below 50,000 Btu/h. (Because an instantaneous water heater is defined as containing no more than 1 gallon of stored water per 4,000 Btu/h of input, the maximum storage volume for a 50,000 Btu/h instantaneous water heater is 12.5 gallons.) The storage volumes 2 and 50 gallons represent the bounds of instantaneous water heaters with storage volumes at or above 2 gallons. (Consumer instantaneous water heaters have a maximum input rate of 200,000 Btu/h. Because instantaneous water heaters are defined as having no more than 1 gallon of stored water per 4,000 Btu/h of input, the maximum storage volume for a 200,000 Btu/h consumer instantaneous water heater is 50 gallons.) DOE assumed that for models at or below 50,000, Btu/h the representative input rate would be 50,000 Btu/h. For the models with a storage volume at 2 gallons, DOE used the input rate at the average of models currently available on the market for minimally compliant units with 0 gallons of storage volume as the representative input rate. DOE assumed that the input rate of such a unit would be similar to models on the market with no storage volume. For models with a storage volume larger than 2 gallons, DOE assumed a representative input rate of 200,000 Btu/h. Recovery efficiencies were assumed to be 76 percent for all volumes. This recovery efficiency value is less than the average currently available on the market, but DOE believes it is more representative of a unit that would have been on the market when the EPCA standards were first prescribed. DOE used the consumer gas-fired storage conversion to derive the updated standards due to the storage volumes being in the range typically observed for storage water heaters.

---

[20] 10.24 gallons is the maximum possible storage volume for an electric instantaneous water heater because EPCA defines these products as having no more than one gallon of water per 4,000 Btu per hour of input and a maximum input rating of 12 kW. 12 kW converts to 40,946 Btu/h, which when divided by 4,000 Btu/h results in a maximum storage volume of 10.24 gallons to be considered as an electric instantaneous water heater.

For residential-duty commercial oil-fired storage water heaters, the standard increased from 78 to 80 percent in October 2015. 10 CFR 431.110. DOE used the average input rates for all residential-duty commercial oil-fired storage water heaters that comply with the amended standard to derive the inputs needed for the updated energy conservation standard.

For residential-duty commercial electric instantaneous water heaters, there were no minimally-compliant units (*i.e.,* thermal efficiency of 80 percent) on the market. As with consumer electric instantaneous water heaters, DOE recognizes that it is unlikely that a model using electric resistance elements would have a thermal efficiency of 80 percent, and the thermal efficiency of such equipment is likely to be much higher. However, DOE used the thermal efficiency value of 80 percent in calculating the equivalent UEF standard, because this represents a hypothetical minimally-compliant model. DOE used the proposed conversion equation for each draw pattern (see section III.E.2.d) to predict the UEF of a minimally-compliant model.

In response to the translated standards presented in the April 2015 NOPR, AHRI, Bradford White, and Rheem raised concerns that the stringency of the updated standards was not maintained. (AHRI, No. 13 at p. 4; Bradford White, No. 14 at p. 2; Rheem, No. 11 at p. 2) In particular, Rheem commented that 20 of the 43 consumer storage water heaters that DOE tested in support of the NOPR generated tested UEF values less than the applicable converted UEF value chosen by the DOE in the NOPR. Rheem elaborated that, in order for the stringency of energy efficiency standards to not be altered during the transition from the UEF conversion factor period to the UEF tested value period thereafter, a tested value of UEF for a water heater model should comply if its converted UEF value complies with the proposed minimum standard. (Rheem, No. 11 at p. 5) Rheem also stated that three of the seven residential-duty commercial water heaters tested by DOE have tested UEF values below their respective analytical-regression UEF values. Given that these water heaters currently comply with thermal efficiency and standby loss standards in effect and the DOE's tentative determination in the NOPR to use the analytical-regression method to generate the UEF conversion factor for residential-duty commercial water heaters, Rheem asserted that there is cause for concern that the UEF conversion factor will result in the minimum energy conservation standard for this water heater classification becoming more stringent. (Rheem, No. 11 at p. 5)

Bradford White asserted that the proposed converted standard in terms of UEF for electric storage water heaters is more stringent than the EF standard. (Bradford White, No. 14 at p. 2) AHRI also claimed that the proposed UEF standard for electric storage water heaters is too stringent, arguing that the converted UEF values for these models in the NOPR were higher than the tested UEF values and that models complying with the EF standards would not meet the UEF standards. (AHRI, No. 6 at p. 2) Rheem asserted that for consumer electric storage water heaters tested using the low draw pattern, test data consistently revealed tested UEF values three to four points below the proposed UEF minimum. For consumer electric storage water heaters tested using the medium draw pattern, Rheem observed that there were some measured UEF values two to three points below the proposed UEF minimum. (Rheem, No. 11 at p. 4) EEI stated that the proposed UEF minimums for electric storage water heaters are not neutral for products representing a large share of the consumer market. (EEI, No. 17 at p. 2)

Bradford White stated that the proposed converted standard in terms of UEF for gas-fired storage water heaters tested using the high draw pattern is less stringent than the EF standard, and that the standard for models tested using the medium draw pattern would be more or less stringent, depending on the model. (Bradford White, No. 14 at p. 2) Rheem stated that for gas-fired storage models tested using the high draw pattern, its test data showed measured UEF values two to three points higher than the proposed converted UEF standards. EEI commented that there were issues with gas-fired storage water heaters at high draw patterns, where the converted minimum UEF standard is less stringent than the EF standard. (EEI, No. 17 at p. 2)

Rheem commented that for several models tested by DOE (identified in the April 2015 NOPR as CS–6, CS–13, CS–29, CS–30, and CS–39) the measured UEF was less than the converted UEF standard. Rheem stated that for gas-fired instantaneous water heaters that would be tested with the medium draw pattern, the measured UEF is 1 point lower than the proposed minimum UEF level. Rheem also stated that for gas-fired instantaneous water heaters that would be tested with the high draw pattern, the measured UEF is consistently 2 to 3 points higher than the proposed minimum UEF level. (Rheem, No. 11 at p. 4) Further, Rheem stated that after the 1 year application period of the conversion factor, units which previously passed the minimum EF standards could test to fail the updated minimum UEF standards. (Rheem, No. 11 at p. 3)

In response to these comments, DOE acknowledges that the test data presented in section III.E.2 show that some units which previously passed the EF energy conservation standards would fail the proposed UEF standards, while other units which previously failed would now pass. As discussed in section III.A, DOE recognizes that the conversion factors presented cannot perfectly model the behavior of all water heaters, and therefore, uncertainty is carried through to deriving the updated energy conservation standards. The standards presented in Table III.40 and Table III.41 were derived using a method that was intended to reduce the number of units that would either be non-compliant under the EF test method and compliant under the UEF test method or vice versa, so as to maintain the stringency of the updated standard. Nevertheless, to ensure that water heaters which previously passed the EF energy conservation standards will continue to comply, pre-existing models that are compliant with the EF energy conservation standards are "grandfathered," as described below in section III.F.

The proposed standards in terms of uniform energy factor are shown below by product class and draw pattern.

TABLE III.40—PROPOSED CONSUMER WATER HEATER ENERGY CONSERVATION STANDARDS

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	<20 gal	Very Small	$0.2471 - (0.0002 \times V_r)$.
		Low	$0.5132 - (0.0012 \times V_r)$
		Medium	$0.5827 - (0.0015 \times V_r)$.
		High	$0.6507 - (0.0019 \times V_r)$.
	≥20 gal and ≤55 gal	Very Small	$0.3456 - (0.0020 \times V_r)$.
		Low	$0.5982 - (0.0019 \times V_r)$.
		Medium	$0.6483 - (0.0017 \times V_r)$.
		High	$0.6920 - (0.0013 \times V_r)$.
	>55 gal and ≤100 gal	Very Small	$0.6470 - (0.0006 \times V_r)$.
		Low	$0.7689 - (0.0005 \times V_r)$.
		Medium	$0.7897 - (0.0004 \times V_r)$.
		High	$0.8072 - (0.0003 \times V_r)$.
	>100 gal	Very Small	$0.1755 - (0.0006 \times V_r)$.
		Low	$0.4671 - (0.0015 \times V_r)$.
		Medium	$0.5719 - (0.0018 \times V_r)$.
		High	$0.6916 - (0.0022 \times V_r)$.
Oil-fired Storage Water Heater	≤50 gal	Very Small	$0.1822 - (-0.0001 \times V_r)$.
		Low	$0.5313 - (0.0014 \times V_r)$.
		Medium	$0.6316 - (0.0020 \times V_r)$.
		High	$0.7334 - (0.0028 \times V_r)$.
	>50 gal	Very Small	$0.1068 - (0.0007 \times V_r)$.
		Low	$0.4190 - (0.0017 \times V_r)$.
		Medium	$0.5255 - (0.0021 \times V_r)$.
		High	$0.6438 - (0.0025 \times V_r)$.
Electric Storage Water Heaters	<20 gal	Very Small	$0.7836 - (0.0013 \times V_r)$.
		Low	$0.8939 - (0.0008 \times V_r)$.
		Medium	$0.9112 - (0.0007 \times V_r)$.
		High	$0.9255 - (0.0006 \times V_r)$.
	≥20 gal and ≤55 gal	Very Small	$0.8808 - (0.0008 \times V_r)$.
		Low	$0.9254 - (0.0003 \times V_r)$.
		Medium	$0.9307 - (0.0002 \times V_r)$.
		High	$0.9349 - (0.0001 \times V_r)$.
	>55 gal and ≤120 gal	Very Small	$1.9236 - (0.0011 \times V_r)$.
		Low	$2.0440 - (0.0011 \times V_r)$.
		Medium	$2.1171 - (0.0011 \times V_r)$.
		High	$2.2418 - (0.0011 \times V_r)$.
	>120 gal	Very Small	$0.6802 - (0.0003 \times V_r)$.
		Low	$0.8620 - (0.0006 \times V_r)$.
		Medium	$0.9042 - (0.0007 \times V_r)$.
		High	$0.9437 - (0.0007 \times V_r)$.
Tabletop Water Heater	All	Very Small	$0.6323 - (0.0058 \times V_r)$.
		Low	$0.9188 - (0.0031 \times V_r)$.
		Medium	$0.9577 - (0.0023 \times V_r)$.
		High	$0.9884 - (0.0016 \times V_r)$.
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h	Very Small	$0.7964 - (0.0000 \times V_r)$.
		Low	$0.8055 - (0.0000 \times V_r)$.
		Medium	$0.8070 - (0.0000 \times V_r)$.
		High	$0.8086 - (0.0000 \times V_r)$.
	≥2 gal or ≤50,000 Btu/h	Very Small	$0.3013 - (0.0023 \times V_r)$.
		Low	$0.5421 - (0.0024 \times V_r)$.
		Medium	$0.5942 - (0.0021 \times V_r)$.
		High	$0.6415 - (0.0017 \times V_r)$.
Instantaneous Oil-fired Water Heater	All	Very Small	$0.1430 - (0.0015 \times V_r)$.
		Low	$0.4455 - (0.0023 \times V_r)$.
		Medium	$0.5339 - (0.0023 \times V_r)$.
		High	$0.6245 - (0.0021 \times V_r)$.
Instantaneous Electric Water Heater	All	Very Small	$0.9161 - (0.0039 \times V_r)$.
		Low	$0.9159 - (0.0009 \times V_r)$.
		Medium	$0.9160 - (0.0005 \times V_r)$.
		High	$0.9161 - (0.0003 \times V_r)$.
Grid-Enabled Water Heater	>75 gal	Very Small	$1.0136 - (0.0028 \times V_r)$.

TABLE III.40—PROPOSED CONSUMER WATER HEATER ENERGY CONSERVATION STANDARDS—Continued

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
		Low	$0.9984 - (0.0014 \times V_r)$.
		Medium	$0.9853 - (0.0010 \times V_r)$.
		High	$0.9720 - (0.0007 \times V_r)$.

* V_r is the rated storage volume which equals the water storage capacity of a water heater (in gallons), as specified by the manufacturer.

TABLE III.41—PROPOSED RESIDENTIAL-DUTY COMMERCIAL WATER HEATER ENERGY CONSERVATION STANDARDS

Product class	Draw pattern	Uniform energy factor
Gas-fired Storage	Very Small	$0.2670 - (0.0009 \times V_r)$.
	Low	$0.5356 - (0.0012 \times V_r)$.
	Medium	$0.5996 - (0.0011 \times V_r)$.
	High	$0.6592 - (0.0009 \times V_r)$.
Oil-fired Storage	Very Small	$0.2932 - (0.0015 \times V_r)$.
	Low	$0.5596 - (0.0018 \times V_r)$.
	Medium	$0.6194 - (0.0016 \times V_r)$.
	High	$0.6740 - (0.0013 \times V_r)$.
Electric Instantaneous	Very Small	0.80
	Low	0.80
	Medium	0.80
	High	0.80

* V_r is the rated storage volume which equals the water storage capacity of a water heater (in gallons), as specified by the manufacturer.

Lutz suggested determining the energy conservation standards using only test data from minimally-compliant water heaters. He stated that this method would remove the uncertainty which compounds throughout the conversion process. (Lutz, No. 16 at p. 3) DOE believes that an appropriate amount of minimally-compliant water heater test data is currently not present to pursue this method. Based on stakeholder comments, DOE selected units for testing with a range of attributes and associated EF levels. As the effect of the uniform efficiency descriptor test procedure cannot be fully known without testing all units on the market, it is a possibility that a minimally compliant unit may perform better than a unit that was rated above the minimum. Further, a water heater would have to have a tested EF at the minimum energy conservation standard, not just be rated at the minimum. Therefore, for these reasons, DOE did not use this method for deriving the proposed standards.

Rheem and AHRI argued that the relative difference between the minimum EF and EF should be maintained between the minimum UEF and UEF values. (Rheem, No. 11 at p. 3; AHRI, No. 6 at p. 2) AHRI also asserted that if the relative difference is not maintained, then a manufacturer's investment could be wasted. (AHRI, No. 3 at p. 2) AHRI expressed the view that it is more important to look at the difference in the measurements between the EF and UEF test procedures, and recommended that DOE should examine the difference in EF and UEF measurements for models rated at the applicable minimum EF value to help check the validity of the proposed converted minimum standards. (AHRI, No. 13 at p. 5) DOE agrees that the relative difference between minimum and rated values is an important factor to consider when developing the energy conservation standards. The proposed "representative model" method uses the EF-denominated energy conservation standard values to derive the new standard equations; therefore, DOE believes the stringency of the standards is maintained for the market as a whole. However, test data show that water heaters do not all have the same reaction to the new test procedure, and as such, the relative difference in the standards cannot be exactly maintained for each individual model. In addition, not all manufacturers rate models with the same degree of conservativism, so the relationship between rated and measured values is not constant.

Regarding specifically the energy conservation standards for the residential-duty commercial water heater equipment class, EEI stated that this was a non-standard process for creating the proposed standards. (EEI, No. 5 at p. 2) In response, DOE clarifies that DOE is not creating new standards for residential-duty commercial water heaters. Rather, this equipment has always been covered under the applicable commercial water heating equipment standards. DOE is simply translating the commercial water heating equipment standards from the thermal efficiency and standby loss metrics in use today to the UEF metric for the subset of commercial water heating equipment that would meet the definition of a "residential-duty commercial water heater" at 10 CFR 431.102.

a. Storage Volume Used for Calculations

In the July 2014 final rule, DOE amended the certification requirements for consumer water heaters to specify that the rated storage volume of a water heater is the mean of the measured storage volume. 79 FR 40542, 40565 (July 11, 2014). Commenters requested clarification on how the rated storage volume will be applied in this rulemaking. (AHRI, No. 3 at p. 2; A. O. Smith, No. 13 at p. 2; Bradford White, No. 14 at p. 3; NEEA, No. 15 at p. 7; Rheem, No. 11 at p. 8)

As discussed in the preceding section, DOE has accounted for the amended certification requirements with regard to the rated storage volume in this rulemaking when translating the standards. First, DOE used the rated storage volumes prior to the effective date of the requirement that the rated storage volume of a water heater be the mean of the measured storage volume to calculate the EF-denominated standards with which to maintain equivalency for each model. Therefore, the stringency of the EF-denominated standards that DOE converted did not change due to the new certification requirements. Second, when calculating the converted UEF standards equations, DOE adjusted the rated storage volume to reflect its new requirement that the rated storage volume be equal to the mean of the measured volume of units in the certification sample (since the storage volumes initially examined were certified prior to the effective date of this requirement).

Before DOE instituted this requirement, a manufacturer had some freedom to choose a volume rating, subject to industry safety standards under which a rated volume had to be within 5 percent of the actual volume for a fossil-fuel-fired water heater or within 10 percent for an electric water heater. Meanwhile, the operation of DOE's energy conservation standard for water heaters gave manufacturers an incentive to rate the volumes of their products as high as possible—because the applicable standard decreased for larger volumes. The combined effect of these two influences, DOE believes, is that fossil-fuel-fired water heaters ordinarily had volume ratings 5 percent higher than their actual volumes, and electric water heaters 10 percent higher. DOE's observations on actual products is consistent with that conclusion.

Consequently, DOE estimated the measured volume as 0.95 times (*i.e.,* 5 percent lower than) the rated storage volume for fossil fuel fired water heaters and 0.90 times (*i.e.,* 10 percent lower than) the rated storage volume for electric water heaters. By adjusting the storage volume to reflect what will be the new rated storage volumes that are 5 percent or 10 percent (for fossil fuel and electric water heaters, respectively) below the previous rated storage volume, DOE has accounted for the change in its regulations regarding the rating of storage volumes, and the UEF standard equation will represent the relationship between the new rated storage volume (equivalent to the mean of the measured storage volume for test samples) and UEF. Figure III.1 below shows an example representation of how the energy conservation standards are related to each other based on the rated or estimated measured storage volumes.

BILLING CODE 6450–01–C

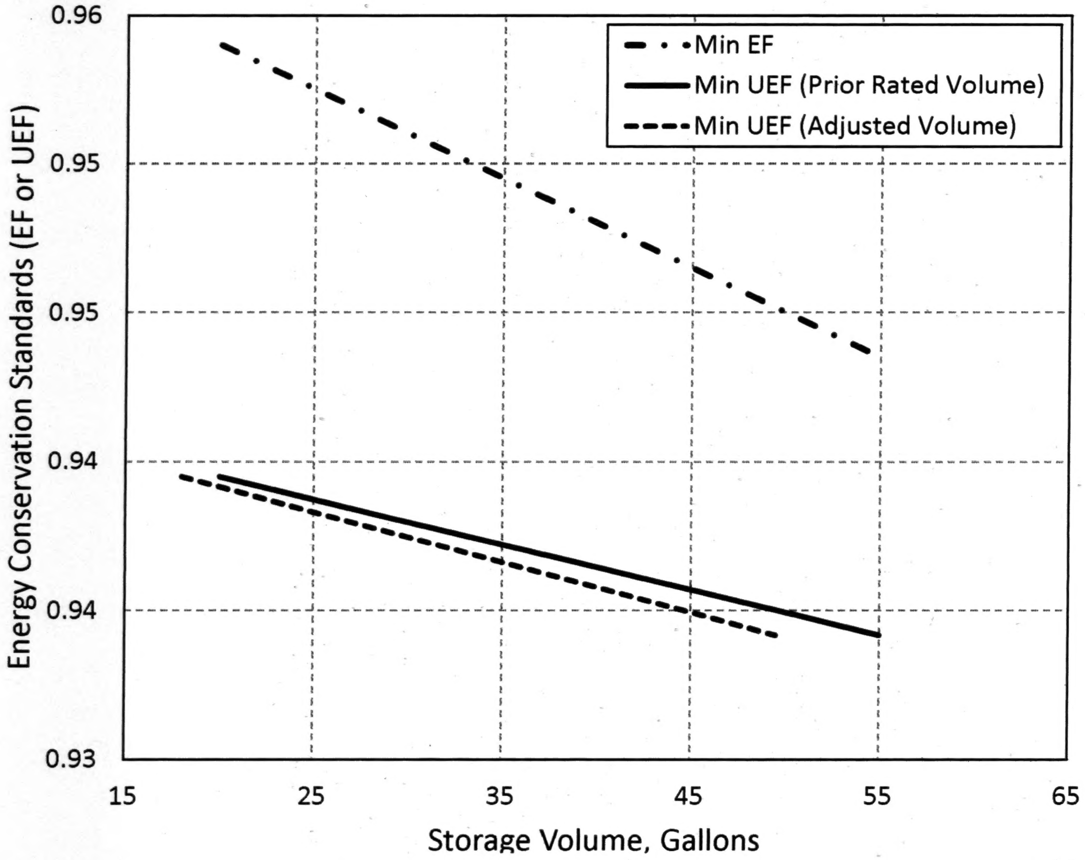

Figure III.1 – Example Representation of Relationship between Storage Volume and the Energy Conservation Standard for Electric Storage Water Heaters

BILLING CODE 6150–01–P

In the July 2014 test procedure final rule, DOE added enforcement provisions that state that the rated value for storage volume during enforcement testing will be considered valid only if the measurement is within 5 percent of the certified rating. If the rated storage volume is within 5 percent of the mean of the measured value of storage volume, then that value will be used as the basis for calculation of the required uniform energy factor for the basic model; otherwise, the mean of the measured values will be used as the basis for calculation of the required uniform energy factor for the basic model. 79 FR 40542, 40566 (July 11, 2014); 10 CFR 429.134(d)(2). DOE reviewed the measured storage volume test data for models included in the analysis for this SNOPR and observed that for models which were tested more than once, the measured storage volume was well within five percent of the mean of the measured storage volumes (which will be required to be equal to the rated storage volume under 10 CFR 429.17(a)(1)(ii)(C)) for each respective model. The data set of models tested more than once consists of 10 unique models with 24 total storage volume tests (each model was tested 2 or 3 times). For each model, DOE calculated the mean, standard deviation, and 99.7-percent confidence interval (*i.e.,* 3 times the standard deviation of the measured storage volumes) of the measured storage volumes. DOE then compared the mean of the measured storage volume to the 99.7-percent confidence interval to determine the percent deviation from the mean value that would be within the 99.7-percent confidence interval. The maximum percent change from the mean that would be within the 99.7-percent confidence interval was slightly under one percent. Therefore, DOE proposes to change its enforcement-specific provisions for water heaters to specify that the rated value for storage volume during enforcement testing will be considered valid only if the measurement is within 2 percent of the certified rating. DOE believes two percent more accurately reflects the level of variability that manufacturers are currently able to achieve, and allows for slightly more variability than what was observed in the sample set of this SNOPR.

F. Compliance and Grandfathering

AHRI, Bradford White, Rheem, and EEI recommended that DOE should add provisions to state that any water heater models tested and meeting the minimum EF requirements prior to July 13, 2015 (*i.e.,* those meeting the standards promulgated in the April 2010 final rule and requiring compliance on April 16, 2015), would be considered as meeting the minimum UEF requirements. (AHRI, No. 13 at p. 8; Bradford White, No. 14 at p. 2; Rheem, No. 11 at p. 3; EEI, No. 17 at p. 3) AHRI, Bradford White, and EEI stated that the proposed standards are to be neither more nor less stringent than the EF-denominated standards, as stated in 42 U.S.C. 6293(e), and that this implies grandfathering water heater models will be included in this rulemaking. (AHRI, No. 13 at p. 8; Bradford White, No. 14 at p. 1; EEI, No. 17 at p. 3) Further, Rheem argued that at the time of the switch from allowing the converted UEF to requiring the tested UEF for demonstrating compliance, a tested UEF value should comply if the converted value passes. (Rheem, No. 11 at p. 5) EEI asserted that compliance or non-compliance with the standard can only be determined through the test procedure and that a unit which meets the efficiency standard under the old test procedure should be valid for sale, regardless of the conversion factor result. (EEI, No. 17 at p. 3) EEI also argued that the conversion values should only be used on the FTC EnergyGuide label. (EEI, No. 17 at p. 3) AHRI stated that the converted minimum UEF standards will not have perfect one-to-one correlation with every currently complying model, and therefore, it is essential that DOE establish how grandfathering will be applied so that manufacturers can properly assess the validity of the converted minimum UEF standards. (AHRI, No. 13 at p. 8)

In a paragraph titled "Existing covered water heaters," EPCA provides that a covered water heater (*i.e.,* a water heater subject to the UEF test procedure rule) is considered to comply with the UEF test procedure rule on and after the effective date of the final rule (*i.e.,* July 13, 2015) and with any revised labeling requirements established by the Federal Trade Commission (FTC) to carry out the final rule if the covered water heater was manufactured prior to the effective date of the final rule; and (ii) complied with the efficiency standards and labeling requirements in effect prior to the final rule. (42 U.S.C. 6295(e)(5)(K)) EPCA defines the "final rule," in this context, to be the UEF test procedure final rule. (42 U.S.C. 6295(e)(5)(A)(ii)) The natural reading of this provision is that a water heater (a unit[21]) manufactured prior to July 13, 2015, and compliant with the pre-existing standards when tested using the test procedure in effect on July 13, 2014, is deemed to comply with the UEF test procedure final rule and any corresponding label changes made by the FTC.

Manufacturers appear to read this provision to provide "grandfathering" with respect to compliance with the converted standards. The language does not provide such relief, nor is such relief necessary. The standard applicable to a unit is the standard in effect at the time of manufacture; therefore, units manufactured prior to July 13, 2015, must comply with the corresponding EF/TE/STB standards, and no "grandfathering" is needed. The relevance of the UEF test procedure with respect to such units is for the purposes of representations, which this statutory provision explicitly addresses. Accordingly, DOE reads 42 U.S.C. 6295(e)(5)(K) to provide that manufacturers do not have to retest units of water heaters using the UEF test procedure if they were tested and rated prior to July 13, 2015. DOE notes there is a corresponding provision with respect to the FTC label.

In addition, EPCA provides that manufacturers may use the conversion factor in lieu of testing for models tested prior to July 13, 2015, for a period of one year following the publication of a final rule. In this way, EPCA provides additional relief to manufacturers for models of water heaters that continue to be manufactured on or after July 13, 2015, by delaying the need to complete testing using the UEF test procedure for those models of water heaters manufactured prior to July 13, 2015. *See* 42 U.S.C. 6295(e)(5)(E) (indicating the conversion factor applies to "*models* of covered water heaters" (emphasis added)); *compare* 42 U.S.C. 6295(e)(5)(K) (referring to "existing covered water heaters" and "a covered water heater" rather than a "model of covered water heater").

DOE recognizes that the nature of this conversion process could conceivably result in a few models very close to the standard falling below the converted standard. Although the statute does not provide "grandfathering" of the sort envisioned by manufacturers, DOE believes that there is value in reducing the uncertainty for manufacturers and that there is no significant public harm in letting manufacturers continue sales of certain models. As discussed in great detail throughout this notice, every model responds slightly differently to the change in the test procedure. As a result, there is variability, and units very near the standard level (either above or below) could have a measured efficiency using the new test procedure that would change the compliance status of that unit. Accordingly, DOE will determine the compliance of a basic model—the level of granularity typically used by DOE and manufacturers to evaluate compliance—using the test procedure in effect prior to July 13, 2015, under the following circumstance: The basic model must have been in distribution in commerce prior to July 13, 2015; the basic model must have been tested and properly certified to

---

[21] DOE notes that EPCA appears to distinguish in paragraph (e)(5) of section 6295 between certain provisions that apply on a unit-by-unit basis and other provisions that apply on a model-by-model basis.

DOE as compliant with the applicable standard prior to July 13, 2015; and the units manufactured prior to July 13, 2015, must be essentially identical to the units manufactured on or after July 13, 2015. The last requirement for this policy—that units must be essentially identical—bears explanation. DOE generally permits manufacturers great latitude in assigning basic model numbers, and manufacturers normally are not required to certify a model as a new basic model if modifications make the model more efficient. In implementing this policy, DOE believes that, if a manufacturer makes changes to a model (that make it either more efficient or less), then it should conduct the requisite testing using the UEF test procedure and ensure the compliance of the model with the converted standard. This policy is intended to give certainty to manufacturers with respect to historical models; it is not intended to provide a mechanism to perpetuate an obsolete test method and obsolete metrics.

In summary, EPCA provides that units of water heaters can continue to have their efficiency represented in terms of the "old" metrics. EPCA also provides that manufacturers can use the conversion factors to determine represented values for a period of one year following issuance of a final rule in this rulemaking for models that were being manufactured prior to July 13, 2015. Under EPCA, units manufactured on or after July 13, 2015, must meet the standard as denominated in the UEF metric; however, DOE will implement an enforcement policy that DOE will not seek civil penalties for the continued manufacture and distribution in commerce of units of certain basic models as follows: The basic model must have been in distribution in commerce prior to July 13, 2015; the basic model must have been tested and properly certified to DOE as compliant with the applicable standard prior to July 13, 2015; and the units manufactured prior to July 13, 2015, must be essentially identical to the units manufactured on or after July 13, 2015.

DOE recognizes that manufacturers seek certainty that models introduced since July 13, 2015, will not be subject to civil penalties. In enforcing the standard(s), DOE will consider whether these models meet the standard(s) as denoted using the "old" metric(s), the deviation from the UEF standard when tested using the UEF test procedure, and efforts taken by the manufacturer to ensure compliance with the converted, UEF standards. DOE does not intend to issue a "grandfathering" enforcement policy with respect to basic models introduced on and after July 13, 2015, as such a policy does not appear to be necessary at this time.

G. Certification

EPCA requires that the standard for covered water heaters be in terms of UEF as of July 13, 2015. Accordingly, in the April 2015 NOPR, DOE proposed to require manufacturers to provide EF and UEF for consumer water heaters (or thermal efficiency and standby loss and UEF for residential-duty commercial water heaters) in certification reports filed between July 13, 2015, and the compliance date determined by the final rule in this rulemaking. 80 FR 20116, 20138 (April 14, 2015). DOE proposed that manufacturers would not be required to submit revised certification reports for previously certified basic models until the next annual certification date (May 1). *Id.*

In the April 2015 NOPR, DOE noted that allowing manufacturers to submit both EF and UEF data would allow manufacturers to fulfill the statutory requirement to begin using UEF for purposes of compliance with standards but would also allow manufacturers to provide the necessary information to determine costs under the current FTC labeling requirements. DOE stated that this would also allow a transition period for FTC to pursue a rulemaking to determine whether changes are needed to the water heater EnergyGuide label due to changes in the water heater test procedure. Lastly, DOE stated that it expects that the conversion factors proposed in this notice could be used to convert EF to UEF for previously certified basic models or to convert UEF values "backwards" to EF to determine the appropriate costs for labeling of new basic models until FTC has determined whether to make changes to the label. *Id.*

In his comments, Lutz requested that standby heat loss coefficient (UA), Annual Energy Consumption (E_{annual}), Annual Electrical Energy Consumption ($E_{annual,e}$), and Annual Fossil Fuel Energy Consumption ($E_{annual,f}$) be included in the parameters manufacturers are required to submit to DOE and further that they be available to the public in the Compliance Certification Database. Lutz stated that these parameters are already calculated during the UEF test procedure and would help analysts estimate energy consumption of water heaters when operating under conditions that do not exactly match the draw patterns or other conditions specified in the laboratory test procedure. (Lutz, No. 20 at p. 1) DOE has tentatively decided not to add these values as part of the certification report; however, DOE is specifically requesting comment from stakeholders about whether these performance characteristics should be added in the final rule, either as publicly reported characteristics of water heaters or as information that is not published on the DOE Web site.

AHRI, A.O. Smith, and Rheem commented that DOE should delay the effective date of the uniform energy descriptor test procedure. (AHRI, No. 13 at p. 3; A.O. Smith, No. 10 at pp. 1–2; Rheem, No. 11 at p. 10) Specifically, AHRI argued that the statutory timeline cannot override the substantive statutory protections that Congress provided, and it is imperative that DOE take the time and effort to conduct the testing and analysis necessary to ensure that the statutory requirements are met. AHRI also stated that to proceed with implementing the UED test procedure on July 13, 2015, without the existence of appropriate conversion factors, would violate the statute and serve no purpose except to further confuse an already complex situation. (AHRI, No. 13 at pp. 2–3) A.O. Smith urged the postponement of the implementation date because new models would be tested to the new test method and have a valid UEF rating, but without a valid conversion factor in place to convert the relevant minimum efficiency requirement into terms of UEF, there is no basis for determining whether the new model is compliant with minimum efficiency standards. (A.O. Smith, No. 10 at pp. 1–2) Rheem stated that new consumer water heater models introduced in the time period between the compliance date of the amended test procedure and the conversion of the minimum standards will have to be certified with the UEF descriptor in accordance with the UEF test procedure rule, but there will be no established minimum UEF standard for that model to achieve. Rheem asserted that such uncertainty will prevent the launch of new consumer water heater models and cause significant harm to Rheem and its customers. Rheem requested a delay in implementation of the uniform energy descriptor to permit the necessary changes to product and carton labeling and communications that display energy efficiency metrics for all manufactured consumer and residential-duty commercial water heater units. (Rheem, No. 11 at pp. 9–10). NEEA strongly supported the Department's proposal to defer re-certification of existing water heater models until May 2016, noting that manufacturers would need time to transition to the UEF testing and/or calculation regime specified as a result of this rulemaking. (NEEA, No. 15 at p. 7)

Several commenters also cited the complexities of coordinating the DOE metric change with the FTC labelling process, and argued that the need for coordination with FTC should delay the implementation of the uniform efficiency descriptor. A.O. Smith stated the need to coordinate FTC labeling rules with the UEF requirements as a reason to delay implementation, and elaborated that without a valid set of conversion factors, a manufacturer will not be able to "back calculate" cost of operation for the FTC label from a tested UEF. (A.O. Smith, No. 10 at p. 2) GE commented that DOE should harmonize with the FTC labeling process, and fully implement the UEF and conversion once the FTC label has been modified to account for the different usage patterns in the UEF test method. (GE, No. 12 at p. 2) Rheem recommended postponing the adoption of reporting requirements until FTC has had an opportunity to evaluate the EnergyGuide label and revise its format to reflect the metrics derived from the UEF. Rheem noted that the FTC label requires information based on the measurement of EF and that a conversion method would be needed to calculate the EF based on the UEF. Rheem stated that such conversions for marketing and labeling materials will result in displays of performance and cost metrics based upon two different energy efficiency descriptors, which will confuse consumers. Rheem also raised concerns that the differences in energy and water consumption based on the delivery capacity in the UEF test method will lead to differences in annual operating costs reported on the label, which could create an incentive for manufacturers to display the information based on UEF for low and medium usage water heaters in order to display expected lower operating costs. (Rheem, No. 11 at p. 9) AHRI stated that, after the compliance date of the UEF test procedure, DOE will require manufacturers to certify UEF values, but for the FTC label, manufacturers must also have EF-based information. Although DOE had proposed not to require updated certification reports containing represented values for UEF until May 1, 2016, AHRI asserted that to comply with the information requirements of EPCA under section 6293(c), manufacturers must provide the market with UEF-based information. AHRI stated that FTC enforces both the EnergyGuide information and general manufacturer claims regarding their products under the unfair and deceptive trade practices provisions pursuant to section 6303(c), and if manufacturers display information not in conformance with Federally-mandated test procedures, this may be considered a deceptive trade practice. (AHRI, No. 13 at p. 2)

DOE understands the difficulties created by the timing of both the uniform efficiency descriptor rulemaking and the present conversion factor rulemaking for covered water heaters. However, these rulemakings dealt with matters of significant complexity and necessitated a substantial amount of testing to ensure the accuracy and validity of results, as reflected by requests from industry for extended comment periods and additional DOE testing. Consequently, DOE was not able to meet the regulatory timeline envisioned by Congress, and as a result, the Department seeks to alleviate any hardships raised by the current timeline.

Upon the effective date of the final rule that results from this rulemaking, certification of compliance with energy conservation standards will be exclusively in terms of UEF. DOE has tentatively concluded that there will be three possible paths available to manufacturers for certifying compliance of basic models of consumer water heaters that were certified before July 13, 2015: (1) In the year following the final rule in this rulemaking, convert the energy factor values obtained using the test procedure contained in appendix E to subpart B of 10 CFR part 430 of the January 1, 2015 edition of the CFR from energy factor to uniform energy factor using the applicable mathematical conversion factor, and then use the converted uniform energy factors along with the applicable sampling provisions in 10 CFR part 429 to determine the represented uniform energy factor; or (2) Conduct testing using the test procedure contained at appendix E to subpart B of 10 CFR part 430, effective July 13, 2015, along with the applicable sampling provisions in 10 CFR part 429; or (3) Where permitted, apply an alternative efficiency determination method (AEDM) pursuant to 10 CFR 429.70 to determine the represented efficiency of basic models for those categories of consumer water heaters where the "tested basic model" was tested using the test procedure contained at appendix E to subpart B of 10 CFR part 430, effective July 13, 2015.

Similarly, DOE has tentatively concluded that there will be three possible paths available to manufacturers for certifying compliance of basic models of commercial residential-duty water heaters that were certified before July 13, 2015: (1) In the year following the final rule in this rulemaking, convert the thermal efficiency and standby loss values obtained using the test procedure contained in 10 CFR 431.106 of the January 1, 2015 edition of the CFR from thermal efficiency and standby loss to uniform energy factor using the applicable mathematical conversion factor, and then use the converted uniform energy factors along with the applicable sampling provision in 10 CFR part 429 to determine the represented uniform energy factor; or (2) Conduct testing using the test procedure at 10 CFR 431.106, effective July 13, 2015, along with the applicable sampling provisions in part 429; or (3) Where permitted, apply an alternative efficiency determination method (AEDM) pursuant to 10 CFR 429.70 to determine the represented efficiency of basic models for those categories of commercial water heaters where the "tested basic model" was tested using the test procedure at 10 CFR 431.106, effective July 13, 2015.

DOE has already issued an enforcement policy not to seek civil penalties for certification violations during the pendency of this rulemaking. Under that policy, manufacturers are not held accountable for submitting certification reports until a conversion factor final rule is published. DOE intends to extend the certification portion of that policy for an appropriate time period to allow manufacturers to certify compliance using the conversion factors. DOE notes that certification of basic models that were certified prior to July 13, 2015, will only require the application of the appropriate conversion formula(s) from the final rule and, thus, should not require a significant amount of time to complete certification. As the test procedure has been final for more than a year, DOE also expects that the time to complete certification for basic models introduced after July 13, 2015, will not be significant. DOE welcomes data from industry regarding the necessary time to submit such reports.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs

(OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

This proposed rule would prescribe a mathematical conversion that would be used on a limited basis to determine the represented values for consumer water heaters and certain commercial water heaters. For consumer water heaters and certain commercial water heaters, the mathematical conversion would establish a bridge between the rated values based on the results under the energy factor, thermal efficiency, and standby loss test procedures (as applicable) and the uniform energy factor test procedure. DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990.

For the manufacturers of the covered water heater products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000), at 77 FR 49991, 50008–11 (August 20, 2012), and at 81 FR 4469, 4490 (Jan. 26, 2016), and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Consumer water heater manufacturing is classified under NAICS code 335228—"Other Major Household Appliance Manufacturing." The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business. Commercial water heater manufacturing is classified under NAICS code 333318—"Other Commercial and Service Industry Machinery Manufacturing," for which SBA sets a size threshold of 1,000 employees or fewer as being considered a small business.

DOE has identified 11 manufacturers of consumer water heaters that can be considered small businesses. DOE identified five manufacturers of "residential-duty" commercial water heaters that can be considered small businesses. Four of the "residential-duty" commercial water heater manufacturers also manufacture consumer water heaters, so the total number of small water heater manufacturers impacted by this rule would be 12. DOE's research involved reviewing several industry trade association membership directories (*e.g.,* AHRI), product databases (*e.g.,* CCMS, AHRI, CEC, and ENERGY STAR databases), individual company Web sites, and marketing research tools (*e.g.,* Hoovers reports) to create a list of all domestic small business manufacturers of products covered by this rulemaking.

For the reasons explained below, DOE has concluded that the test procedure amendments contained in this proposed rule would not have a significant economic impact on any manufacturer, including small manufacturers.

For consumer water heaters that were covered under the energy factor test procedure and energy conservation standards, the conversion factor in this proposed rule would convert the rated values based on the energy factor test procedure to values based on the uniform energy factor test procedure. Likewise, for certain commercial water heaters, defined under the term "residential-duty commercial water heater," the conversion factor in this proposed rule would convert the rated values based on the previous test procedure to the uniform descriptor which is based on the UEF test procedure. The energy conservation standards for commercial water heating equipment will be denominated using the uniform descriptor.

The conversion factor proposal accomplishes two tasks: (1) Translating the EF-, TE-, and SL-denominated (as applicable) energy conservation standards for consumer water heaters and certain commercial water heaters to being expressed in terms of the metric and test procedure for uniform energy factor; and (2) providing a limited conversion factor that manufacturers can use to translate represented values established for basic models certified prior to July 13, 2015. This limited conversion is a burden-reducing measure which helps to ease the transition of the market to the new test procedure and uniform metric over the one-year period instead of the typical 180 day timeframe allotted by statute. In addition, as discussed in section III.F, DOE will implement an enforcement policy that DOE will not seek civil penalties for the continued manufacture and distribution in commerce of units of certain basic models that meet certain conditions (as described in III.F), thereby further reducing any burden on small business manufacturers. Accordingly, DOE concludes and certifies that this rule, if finalized, would not have a significant economic impact on a substantial number of small entities, so DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will provide its certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of water heaters must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for water heaters, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer and commercial water heaters. 76 FR 12422 (March 7, 2011); 79 FR 25486 (May 5, 2014). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB control number 1910–1400, and this conversion-factor rule does not constitute a significant change to the requirement. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes conversion factors to convert results from prior efficiency and delivery capacity metrics (and related energy conservation standard requirements) for consumer and certain commercial water heaters to the uniform efficiency descriptor. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing rule without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://energy.gov/gc/office-general-counsel.*) DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), DOE has determined that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action, which would develop a conversion factor to amend the energy conservation standards for consumer and certain commercial water heaters in light of new test procedures is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Public Law 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Public Law 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

This proposed rule to implement conversion factors between the existing water heaters test procedure and the amended test procedure does not incorporate testing methods contained in commercial standards.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this supplemental proposed rule, no later than the date provided in the **DATES** section at the beginning of this SNOPR. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Is DOE's method of applying the regression for electric storage water heaters with storage volumes at or below 55 gallons in developing the conversion equation for grid-enabled water heaters appropriate?
2. Is DOE's use of the standard and low-NO_X conversion to calculate the energy conservation standard for consumer gas-fired storage water heaters less than or equal to 55 gallons, and its tentative decision not to propose separate standards for ultra-low-NO_X gas-fired storage water heaters appropriate?
3. Are DOE's assumptions for the typical input rating and recovery efficiency of consumer gas-fired storage water heaters above 55 gallons appropriate?
4. Is DOE's approach for estimating the recovery efficiency of a minimally-compliant (*i.e.,* 0.93 EF) electric instantaneous water heater appropriate?

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, DC, on August 15, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429, 430, and 431 of chapter II subchapter D of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.17 is revised to read as follows:

§ 429.17 Water heaters.

(a) *Determination of represented value.*

(1) As of July 13, 2015, manufacturers must determine the represented value for each new basic model of water heater by applying an AEDM in accordance with 10 CFR 429.70 or by testing for the uniform energy factor, in conjunction with the applicable sampling provisions as follows:

(i) If the represented value is determined through testing, the general requirements of 10 CFR 429.11 are applicable; and

(ii) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of the energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample;

Or,

(*2*) The upper 95-percent confidence limit (UCL) of the true mean divided by 1.10, where

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with n–1 degrees of freedom (from Appendix A).

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i th sample;

Or,

(*2*) The lower 95-percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with n–1 degrees of freedom (from Appendix A).

(C) Any represented value of the rated storage volume must be equal to the mean of the measured storage volumes of all the units within the sample.

(D) Any represented value of first-hour rating or maximum gallons per minute (GPM) must be equal to the mean of the measured first-hour ratings or measured maximum GPM ratings, respectively, of all the units within the sample.

(*2*) For basic models initially certified before July 13, 2015 (using either the energy factor test procedure contained in appendix E to subpart B of 10 CFR part 430 of the January 1, 2015 edition of the Code of Federal Regulations or the thermal efficiency and standby loss test procedures contained in 10 CFR 431.106 of the January 1, 2015 edition of the Code of Federal Regulations, in conjunction with applicable sampling provisions), manufacturers must:

(i) Determine the represented value for each basic model by applying an AEDM in accordance with 10 CFR 429.70 or by testing for the uniform energy factor, in conjunction with the applicable sampling provisions of paragraph (a)(1); or

(ii) Calculate the uniform energy factor for each test sample by applying the following mathematical conversion factors to test data previously obtained through testing according to appendix E to subpart B of 10 CFR part 430 of the January 1, 2015 edition of the Code of Federal Regulations or the thermal efficiency and standby loss test procedures contained in 10 CFR 431.106 of the January 1, 2015 edition of the Code of Federal Regulations. Represented values of uniform energy factor, first-hour rating, and maximum GPM rating based on a calculation using this mathematical conversion factor must be determined using the applicable sampling provisions in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(A) The applicable mathematical conversion factors are as follows:

Product class	Distinguishing criteria	Conversion factor*
Consumer Gas-fired Water Heater	Non-Condensing, Standard and Low NO_X	New FHR = 7.9592 + 0.8752 × FHR_P. New UEF = −0.0002 + 0.9858 × UEF_{WHAM}.
	Non-Condensing, Ultra-Low NO_X	New FHR = 25.0680 + 0.6535 × FHR_P. New UEF = 0.0746 + 0.8653 × UEF_{WHAM}.
	Condensing	New FHR = 1.0570 × FHR_P. New UEF = 0.4242 + 0.4641 × UEF_{WHAM}.
Consumer Oil-fired Water Heater	N/A	New FHR = 1.1012 × FHR_P. New UEF = −0.0934 + 1.1144 × UEF_{WHAM}.
Consumer Electric Water Heater	Electric Resistance	New FHR = 9.2827 + 0.8092 × FHR_P. New UEF = 0.4774 + 0.4740 × UEF_{WHAM}.
	Heat Pump	New FHR = −4.2705 + 0.9947 × FHR_P. New UEF = 0.1513 + 0.8407 × EF + 0.0043 × DV.
Tabletop Water Heater	N/A	New FHR = 41.5127 + 0.1989 × FHR_P. New UEF = −0.3305 + 1.3983 × UEF_{WHAM}.
Instantaneous Gas-fired Water Heater	N/A	New Max GPM = 1.1461 × Max GPM_P. New UEF = 0.1006 + 0.8622 × UEF_{model}.
Instantaneous Electric Water Heater	N/A	New Max GPM = 1.1461 × Max GPM_P. New UEF = 0.9847 × UEF_{model}.
Grid-Enabled Water Heater	N/A	New FHR = 9.2827 + 0.8092 × FHR_P. New UEF = 0.4774 + 0.4740 × UEF_{WHAM}.
Residential-Duty Commercial Gas-fired Water Heater.	N/A	New FHR = −35.8233 + 0.4649 × V_r + 160.5089 × E_t. New UEF = −0.0022 + 1.0002 × UEF_{rd}.
Residential-Duty Commercial Oil-fired Water Heater.	N/A	New FHR = −35.8233 + 0.4649 × V_r + 160.5089 × E_t. New UEF = −0.0022 + 1.0002 × UEFrd.

Product class	Distinguishing criteria	Conversion factor*
Residential-Duty Commercial Electric Instantaneous Water Heater.	N/A	New Max GPM = 0.0146 + 0.0295 × Q. New UEF = $UEF_{rd,\ model}$.

* FHR_P = prior first-hour rating.
Max GPM_P = prior max GPM rating.
Q = nameplate input rate, in kBtu/h.
E_t = thermal efficiency rating.
UEF_{WHAM} = the UEF predicted based on the WHAM equation for consumer storage water heaters, as defined in paragraph (a)(2)(ii)(B) of this section.
UEF_{rd} = the modified WHAM for residential-duty commercial water heaters, as defined in paragraph (a)(2)(ii)(B) of this section.
UEF_{model} = the UEF predicted based on the analytical model developed by DOE for consumer instantaneous water heaters, as defined in paragraph (a)(2)(ii)(B) of this section.
$UEF_{rd\ model}$ = the UEF predicted based on the analytical model developed by DOE for residential-duty commercial instantaneous water heaters, as defined in paragraph (a)(2)(ii)(B) of this section.
DV = drawn volume of water in UEF simulated-use test.
V_r = rated storage volume in gallons.

(B) Calculate UEF_{WHAM} (for consumer storage water heaters), UEF_{model} (for consumer instantaneous water heaters), UEF_{rd} (for residential-duty commercial storage water heaters), and $UEF_{rd,\ model}$ (for residential-duty commercial electric instantaneous water heaters) as follows:

(*1*) For consumer storage water heaters:

$$UEF_{WHAM} = \left[\frac{1}{\eta_r} + \left(\frac{1}{EF} - \frac{1}{\eta_r}\right)\left(\frac{a\,P\,\eta_r - b}{c\,P\,\eta_r - d}\right)\right]^{-1}$$

Where a, b, c, and d are coefficients based on the applicable draw pattern as specified in the table below; EF is the energy factor; η_r is the recovery efficiency in decimal form; and P is the input rate in Btu/h.

Draw pattern	a	b	c	d
Very Small	0.250266	57.5	0.039864	67.5
Low	0.065860	57.5	0.039864	67.5
Medium	0.045503	57.5	0.039864	67.5
High	0.029794	57.5	0.039864	67.5

(*2*) For consumer instantaneous water heaters:

$$UEF_{model} = \frac{\eta_r}{1 + A\eta_r}$$

Where η_r is the recovery efficiency expressed in decimal form and A is dependent upon the applicable draw pattern and fuel type as specified in the table below.

Draw pattern	A	
	Electric	Gas
Very Small	0.003819	0.026915
Low	0.001549	0.010917
Medium	0.001186	0.008362
High	0.000785	0.005534

(*3*) For residential-duty commercial storage water heaters:

$$UEF_{rd} = \left[\frac{1}{E_t} + F * SL\left(G - \frac{1}{P\,E_t}\right)\right]^{-1}$$

Where P is the input rate in Btu/h; Et is the thermal efficiency; SL is the standby loss in Btu/h; and F and G are coefficients as specified in the table below based on the applicable draw pattern.

Draw pattern	F	G
Very Small	0.821429	0.0043520
Low	0.821429	0.0011450
Medium	0.821429	0.0007914
High	0.821429	0.0005181

(*4*) For residential-duty commercial electric instantaneous water heaters:

$$UEF_{rd,model} = \frac{E_t}{1 + AE_t}$$

Where E_t is the thermal efficiency expressed in decimal form and A is dependent upon the applicable draw pattern, as specified in the table below.

Draw pattern	A
Very Small	0.003819
Low	0.001549
Medium	0.001186
High	0.000785

(b) *Certification reports.*

(1) The requirements of 10 CFR 429.12 apply; and

(2) Pursuant to 10 CFR 429.12(b)(13), a certification report must include the following public product-specific information:

(i) For storage-type water heater basic models previously certified for energy factor pursuant to § 429.17(a) of the January 1, 2015 edition of the Code of Federal Regulations, and for which uniform energy factor is calculated pursuant to 10 CFR 429.17(a)(2)(ii): The energy factor (EF, rounded to the nearest 0.01), the uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the uniform energy factor test procedure first-hour rating in gallons (gal, rounded to the nearest 1 gal) as determined under paragraph (a)(2)(ii)(A) of this section, the previously certified first-hour rating under the energy factor test procedure in gallons (gal, rounded to the nearest 1 gal), and the recovery efficiency in percent (%, rounded to the nearest 1%);

(ii) For storage-type water heater basic models rated pursuant to 10 CFR 429.17(a)(1) or 10 CFR 429.17(a)(2)(i): The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), and the recovery efficiency in percent (%, rounded to the nearest 1%);

(iii) For instantaneous-type water heater basic models previously certified for energy factor pursuant to § 429.17(a) of the January 1, 2015 edition of the Code of Federal Regulations, and for which uniform energy factor is calculated pursuant to 10 CFR 429.17(a)(2)(ii): The energy factor (EF, rounded to the nearest 0.01), the uniform energy factor (UEF. rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the uniform energy factor test procedure maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm) as determined under-paragraph (a)(2)(ii)(A) of this section, the previously certified maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm) under the energy factor test procedure, and the recovery efficiency in percent (%, rounded to the nearest 1%); and

(iv) For instantaneous-type water heater basic models rated pursuant to 10 CFR 429.17(a)(1) or 10 CFR 429.17(a)(2)(i): The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm), and the recovery efficiency in percent (%, rounded to the nearest 1%).(the uniform energy factor test procedure first-hour rating in gallons (gal, rounded to the nearest 1 gal) as determined under paragraph (a)(2)(ii)(A) of this section,

(v) For grid-enabled water heater basic models rated pursuant to 10 CFR 429.17(a)(1) or 10 CFR 429.17(a)(2)(i): The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), and the recovery efficiency in percent (%, rounded to the nearest 1%), a declaration that the model is a grid-enabled water heater, whether it is equipped at the point of manufacture with an activation lock, and whether it bears a permanent label applied by the manufacturer that advises purchasers and end-users of the intended and appropriate use of the product.

3. Section 429.17 is further revised, proposed to be effective (*date one year after publication of test procedure final rule*), to read as follows:

§ 429.17 Water heaters.

(a) *Determination of represented value.*

(1) Manufacturers must determine the represented value for each water heater by applying an AEDM in accordance with 10 CFR 429.70 or by testing for the uniform energy factor, in conjunction with the applicable sampling provisions as follows:

(i) If the represented value is determined through testing, the general requirements of 10 CFR 429.11 are applicable; and

(ii) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of the estimated annual operating cost or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The upper 95-percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with n − 1 degrees of freedom (from Appendix A).

(B) Any represented value of the uniform energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, x is the sample mean; n is the number of samples; and x_i is the ith sample;

Or,

(*2*) The lower 95-percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95-percent one-tailed confidence interval with n − 1 degrees of freedom (from Appendix A).

(C) Any represented value of the rated storage volume must be equal to the mean of the measured storage volumes of all the units within the sample.

(D) Any represented value of first-hour rating or maximum gallons per minute (GPM) must be equal to the mean of the measured first-hour ratings or measured maximum GPM ratings, respectively, of all the units within the sample.

(b) *Certification reports.*

(1) The requirements of 10 CFR 429.12 are applicable to water heaters; and

(2) Pursuant to 10 CFR 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For storage-type water heater basic models: The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), the recovery efficiency in percent (%, rounded to the nearest 1%);

(ii) For instantaneous-type water heater basic models: The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm), the recovery efficiency in percent (%, rounded to the nearest 1%); and

(iii) For grid-enabled water heater basic models: The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), the recovery efficiency in percent (%, rounded to the nearest 1%), a declaration that the model is a grid-enabled water heater, whether it is equipped at the point of manufacture with an activation lock, and whether it bears a permanent label applied by the manufacturer that advises purchasers and end-users of the intended and appropriate use of the product.

■ 4. Section 429.44 is amended by revising paragraph (d) [proposed at 81 FR 28588, 28636 (May 9, 2016)] to read as follows:

§ 429.44 Commercial water heating equipment.

* * * * *

(d) *Certification reports for residential-duty commercial water heaters.*

(1) The requirements of § 429.12 apply; and

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public equipment-specific information:

(i) Residential-duty commercial gas-fired and oil-fired storage water heaters previously certified for thermal efficiency and standby loss pursuant to 10 CFR 429.44(b) of the January 1, 2015 edition of the Code of Federal Regulations, and for which uniform energy factor is calculated pursuant to 10 CFR 429.17(a)(2)(ii): The thermal efficiency in percent (%), the standby loss in British thermal units per hour (Btu/h), the uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal), and the nameplate input rate in Btu/h.

(ii) Residential-duty commercial gas-fired and oil-fired storage water heaters rated for uniform energy factor pursuant to 10 CFR 429.17(a)(2)(i): The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), and the recovery efficiency in percent (%, rounded to the nearest 1%).

(iii) Residential-duty commercial electric instantaneous water heaters previously certified for thermal efficiency and standby loss pursuant to 10 CFR 429.44(b) of the January 1, 2015 edition of the Code of Federal Regulations, and for which uniform energy factor is calculated pursuant to 10 CFR 429.17(a)(2)(ii): The thermal efficiency in percent (%), the standby loss in British thermal units per hour (Btu/h), the uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal), and the nameplate input rate in kilowatts (kW).

(iv) Residential-duty commercial electric instantaneous water heaters rated for uniform energy factor pursuant to 10 CFR 429.17(a)(2)(i): The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm), and the recovery efficiency in percent (%, rounded to the nearest 1%)).

* * * * *

■ 5. Section 429.44 is further amended, proposed to be effective (*date one year after publication of test procedure final rule*), by revising paragraph (d)(2) to read as follows:

§ 429.44 Commercial water heating equipment.

* * * * *

(d) * * *

(2) Pursuant to § 429.12(b)(13), a certification report for equipment must include the following public equipment-specific information:

(i) Residential-duty commercial gas-fired and oil-fired storage water heaters: The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the first-hour rating in gallons (gal, rounded to the nearest 1 gal), and the recovery efficiency in percent (%, rounded to the nearest 1%).

(ii) Residential-duty commercial electric instantaneous water heaters: The uniform energy factor (UEF, rounded to the nearest 0.01), the rated storage volume in gallons (gal, rounded to the nearest 1 gal), the maximum gallons per minute (gpm, rounded to the nearest 0.1 gpm), and the recovery efficiency in percent (%, rounded to the nearest 1%).

* * * * *

■ 6. Section 429.134 is revised by amending paragraph (d)(2) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(d) * * *

(2) *Verification of rated storage volume.* The storage volume of the basic model will be measured pursuant to the test requirements of appendix E to subpart B of 10 CFR part 430 for each unit tested. The mean of the measured values will be compared to the rated storage volume as certified by the manufacturer. The rated value will be considered valid only if the measurement is within two percent of the certified rating.

(i) If the rated storage volume is found to be within 2 percent of the mean of the measured value of storage volume, then the rated value will be used as the basis for calculation of the required uniform energy factor for the basic model.

(ii) If the rated storage volume is found to vary more than 2 percent from the mean of the measured values, then the mean of the measured values will be used as the basis for calculation of the required uniform energy factor for the basic model.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 7. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 8. Section 430.23 is amended by revising paragraph (e) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(e) *Water Heaters.*

(1) For water heaters tested using energy factor:

(i) The estimated annual operating cost for water heaters tested in terms of energy factor is calculated as—

(A) For a gas-fired or oil-fired water heater, the product of the annual energy consumption, determined according to section 6.1.8 or 6.2.5 of appendix E to subpart B of 10 CFR part 430 of the January 1, 2015 edition of the Code of Federal Regulations, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary. Round the resulting product to the nearest dollar per year.

(B) For an electric water heater, the product of the annual energy consumption, determined according to section 6.1.8 or 6.2.5 of appendix E to subpart B to 10 CFR part 430 of the January 1, 2015 edition of the Code of Federal Regulations, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary, divided by 3412 Btu per kilowatt-hour. Round the resulting quotient to the nearest dollar per year.

(ii) For an individual unit, determine the tested energy factor in accordance with section 6.1.7 or 6.2.4 of appendix E to subpart B of 10 CFR part 430 of the January 1, 2015 edition of the Code of Federal Regulations, and round the value to the nearest 0.01.

(2) For water heaters tested using uniform energy factor:

(i) The estimated annual operating cost is calculated as:

(A) For a gas-fired or oil-fired water heater, the sum of: The product of the annual gas or oil energy consumption, determined according to section 6.3.9 or 6.4.6 of appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary; plus the product of the annual electric energy consumption, determined according to section 6.3.8 or 6.4.5 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting sum to the nearest dollar per year.

(B) For an electric water heater, the product of the annual energy consumption, determined according to section 6.3.7 or 6.4.4 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting product to the nearest dollar per year.

(ii) For an individual unit, determine the tested uniform energy factor in accordance with section 6.3.6 or 6.4.3 of appendix E of this subpart, and round the value to the nearest 0.01.

* * * * *

■ 9. Section 430.23 paragraph (e) is further revised, proposed to be effective (*date one year after publication of test procedure final rule*), to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(e) *Water Heaters.*

(1) The estimated annual operating cost is calculated as:

(i) For a gas-fired or oil-fired water heater, the sum of: The product of the annual gas or oil energy consumption, determined according to section 6.3.9 or 6.4.6 of appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary; plus the product of the annual electric energy consumption, determined according to section 6.3.8 or 6.4.5 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting sum to the nearest dollar per year.

(ii) For an electric water heater, the product of the annual energy consumption, determined according to section 6.3.7 or 6.4.4 of appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary. Round the resulting product to the nearest dollar per year.

(2) For an individual unit, determine the tested uniform energy factor in accordance with section 6.3.6 or 6.4.3 of appendix E of this subpart, and round the value to the nearest 0.01.

* * * * *

■ 10. Section 430.32 is amended by revising paragraph (d) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(d) *Water heaters.* The uniform energy factor of water heaters shall not be less than the following:

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
Gas-fired Storage Water Heater	<20 gal	Very Small	0.2471–(0.0002 x V_r).
		Low	0.5132–(0.0012 x V_r).
		Medium	0.5827–(0.0015 x V_r).
		High	0.6507–(0.0019 x V_r).
	≥20 gal and ≤55 gal	Very Small	0.3456–(0.0020 x V_r).
		Low	0.5982–(0.0019 x V_r).
		Medium	0.6483–(0.0017 x V_r).
		High	0.6920–(0.0013 x V_r).
	>55 gal and ≤100 gal	Very Small	0.6470–(0.0006 x V_r).
		Low	0.7689–(0.0005 x V_r).
		Medium	0.7897–(0.0004 x V_r).
		High	0.8072–(0.0003 x V_r).
	>100 gal	Very Small	0.1755–(0.0006 x V_r).
		Low	0.4671–(0.0015 x V_r).
		Medium	0.5719–(0.0018 x V_r).
		High	0.6916–(0.0022 x V_r).
Oil-fired Storage Water Heater	≤50 gal	Very Small	0.1822–(-0.0001 x V_r).
		Low	0.5313–(0.0014 x V_r).
		Medium	0.6316–(0.0020 x V_r).
		High	0.7334–(0.0028 x V_r).
	>50 gal	Very Small	0.1068–(0.0007 x V_r).
		Low	0.4190–(0.0017 x V_r).
		Medium	0.5255–(0.0021 x V_r).
		High	0.6438–(0.0025 x V_r).
Electric Storage Water Heaters	<20 gal	Very Small	0.7836–(0.0013 x V_r).
		Low	0.8939–(0.0008 x V_r).
		Medium	0.9112–(0.0007 x V_r).
		High	0.9255–(0.0006 x V_r).
	≥20 gal and ≤55 gal	Very Small	0.8808–(0.0008 x V_r).
		Low	0.9254–(0.0003 x V_r).

Product class	Rated storage volume and input rating (if applicable)	Draw pattern	Uniform energy factor
		Medium	0.9307–(0.0002 x V_r).
		High	0.9349–(0.0001 x V_r).
	>55 gal and ≤120 gal	Very Small	1.9236–(0.0011 x V_r).
		Low	2.0440–(0.0011 x V_r).
		Medium	2.1171–(0.0011 x V_r).
		High	2.2418–(0.0011 x V_r).
	>120 gal	Very Small	0.6802–(0.0003 x V_r).
		Low	0.8620–(0.0006 x V_r).
		Medium	0.9042–(0.0007 x V_r).
		High	0.9437–(0.0007 x V_r).
Tabletop Water Heater	All	Very Small	0.6323–(0.0058 x V_r).
		Low	0.9188–(0.0031 x V_r).
		Medium	0.9577–(0.0023 x V_r).
		High	0.9884–(0.0016 x V_r).
Instantaneous Gas-fired Water Heater	<2 gal and >50,000 Btu/h	Very Small	0.7964–(0.0000 x V_r).
		Low	0.8055–(0.0000 x V_r).
		Medium	0.8070–(0.0000 x V_r).
		High	0.8086–(0.0000 x V_r).
	≥2 gal or ≤50,000 Btu/h	Very Small	0.3013–(0.0023 x V_r).
		Low	0.5421–(0.0024 x V_r).
		Medium	0.5942–(0.0021 x V_r).
		High	0.6415–(0.0017 x V_r).
Instantaneous Oil-fired Water Heater	All	Very Small	0.1430–(0.0015 x V_r).
		Low	0.4455–(0.0023 x V_r).
		Medium	0.5339–(0.0023 x V_r).
		High	0.6245–(0.0021 x V_r).
Instantaneous Electric Water Heater	All	Very Small	0.9161–(0.0039 x V_r).
		Low	0.9159–(0.0009 x V_r).
		Medium	0.9160–(0.0005 x V_r).
		High	0.9161–(0.0003 x V_r).
Grid-Enabled Water Heater	>75 gal	Very Small	1.0136–(0.0028 x V_r).
		Low	0.9984–(0.0014 x V_r).
		Medium	0.9853–(0.0010 x V_r).
		High	0.9720–(0.0007 x V_r).

*V_r is the rated storage volume in gallons.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 11. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317. 28 U.S.C. 2461 note.

■ 12. Section 431.110 is amended by revising paragraph (d) [proposed at 81 FR 34440. 34536–34537 (May 31, 2016)] to read as follows:

§ 431.110 Energy conservation standards and their effective dates.

* * * * *

(d) Each residential-duty commercial water heater manufactured prior to (*date 3 years after publication in the* ***Federal Register*** *of the final rule establishing amended energy conservation standards for commercial water-heating equipment*) must meet the applicable energy conservation standard level(s) as follows:

Product class	Specifications[a]	Draw pattern	Uniform energy factor[b]
Gas-fired Storage	>75 kBtu/hr and ≤105 kBtu/hr and ≤120 gal	Very Small	0.2670 − (0.0009 × V_r)
		Low	0.5356 − (0.0012 × V_r)
		Medium	0.5996 − (0.0011 × V_r)
		High	0.6592 − (0.0009 × V_r)
Oil-fired Storage	>105 kBtu/hr and ≤140 kBtu/hr and ≤120 gal	Very Small	0.2932 − (0.0015 × V_r)
		Low	0.5596 − (0.0018 × V_r)
		Medium	0.6194 − (0.0016 × V_r)
		High	0.6740 − (0.0013 × V_r)
Electric Instantaneous	>12 kW and ≤58.6 kW and ≤2 gal	Very Small	0.80
		Low	0.80
		Medium	0.80
		High	0.80

[a] Additionally, to be classified as a residential-duty commercial water heater, a commercial water heater must meet the following conditions: (1) If the water heater requires electricity, it must use a single-phase external power supply; and (2) the water heater must not be designed to heat water to temperatures greater than 180 °F.

[b] V_r is the rated storage volume in gallons.

* * * * *

[FR Doc. 2016–20097 Filed 8–29–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 168 August 30, 2016

Part III

Environmental Protection Agency

40 CFR Parts 51, 60, 61, *et al.*
Revisions to Test Methods, Performance Specifications, and Testing
Regulations for Air Emission Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, 61, and 63

[EPA–HQ–OAR–2014–0292; FRL–9950–57–OAR]

RIN 2060–AS34

Revisions to Test Methods, Performance Specifications, and Testing Regulations for Air Emission Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates technical and editorial corrections and revisions to regulations related to source testing of emissions. We have made corrections and updates to testing provisions, and added newly approved alternatives to existing testing regulations. These revisions will improve the quality of data and provide flexibility in the use of approved alternative procedures. The revisions do not impose any new substantive requirements on source owners or operators.

DATES: The final rule is effective on October 31, 2016. The incorporation by reference materials listed in the rule are approved by the Director of the Federal Register as of October 31, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0292. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lula H. Melton, Office of Air Quality Planning and Standards, Air Quality Assessment Division (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information in this preamble is organized as follows:

Table of Contents

I. General Information
  A. Does this action apply to me?
  B. What action is the Agency taking?
  C. Judicial Review
II. Background
III. Summary of Amendments
  A. Appendix M of Part 51
  B. Method 201A of Appendix M of Part 51
  C. Method 202 of Appendix M of Part 51
  D. Appendix P of Part 51
  E. General Provisions (Subpart A) of Part 60
  F. Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) of Part 60
  G. Method 1 of Appendix A–1 of Part 60
  H. Method 2 of Appendix A–1 of Part 60
  I. Method 2G of Appendix A–2 of Part 60
  J. Method 3C of Appendix A–2 of Part 60
  K. Method 4 of Appendix A–3 of Part 60
  L. Method 5 of Appendix A–3 of Part 60
  M. Method 5H of Appendix A–3 of Part 60
  N. Method 5I of Appendix A–3 of Part 60
  O. Method 6C of Appendix A–4 of Part 60
  P. Method 7E of Appendix A–4 of Part 60
  Q. Method 10 of Appendix A–4 of Part 60
  R. Methods 10A and 10B of Appendix A–4 of Part 60
  S. Method 15 of Appendix A–5 of Part 60
  T. Method 16C of Appendix A–6 of Part 60
  U. Method 18 of Appendix A–6 of Part 60
  V. Method 25C of Appendix A–7 of Part 60
  W. Method 26 of Appendix A–8 of Part 60
  X. Method 26A of Appendix A–8 of Part 60
  Y. Method 29 of Appendix A–8 of Part 60
  Z. Method 30A of Appendix A–8 of Part 60
  AA. Method 30B of Appendix A–8 of Part 60
  BB. Appendix B to Part 60—Performance Specifications
  CC. Performance Specification 1 of Appendix B of Part 60
  DD. Performance Specification 2 of Appendix B of Part 60
  EE. Performance Specification 3 of Appendix B of Part 60
  FF. Performance Specification 4A of Appendix B of Part 60
  GG. Performance Specification 11 of Appendix B of part 60
  HH. Performance Specification 15 of Appendix B of Part 60
  II. Performance Specification 16 of Appendix B of Part 60
  JJ. Procedure 2 of Appendix F of Part 60
  KK. General Provisions (Subpart A) of Part 61
  LL. Method 107 of Appendix B of Part 61
  MM. General Provisions (Subpart A) of Part 63
  NN. Method 320 of Appendix A of Part 63
IV. Public Comments on the Proposed Rule
V. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  B. Paperwork Reduction Act (PRA)
  C. Regulatory Flexibility Act (RFA)
  D. Unfunded Mandates Reform Act (UMRA)
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
  I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me ?

The revisions promulgated in this final rule apply to a large number of industries that are already subject to the current provisions of 40 Code of Federal Regulations (CFR) parts 51, 60, 61, and 63. For example, Performance Specification 4A applies to municipal waste combustors and hazardous waste incinerators. We did not list all of the specific affected industries or their North American Industry Classification System (NAICS) codes herein since there are many affected sources. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

B. What action is the Agency taking?

We are promulgating technical and editorial corrections and revisions to regulations related to source testing of emissions. More specifically, we are correcting typographical and technical errors, updating obsolete testing procedures, adding approved testing alternatives, and clarifying testing requirements.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by October 31, 2016. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

II. Background

The revisions to test methods, performance specifications, and testing regulations were proposed in the **Federal Register** on September 8, 2015 (80 FR 54146). The public comment period ended December 9, 2015, and 42 comment letters were received from the public. Changes were made to this final rule based on the public comments.

III. Summary of Amendments

A. Appendix M of Part 51

In paragraph (4)(a) of appendix M to part 51, Methods 30A and 30B are added to the list of methods not requiring the use of audit samples.

B. Method 201A of Appendix M of Part 51

In Method 201A, the constant in equation 9 is corrected from 0.07657 to 0.007657.

C. Method 202 of Appendix M of Part 51

In Method 202, section 3.8 is added to incorporate ASTM E617–13 by reference. The first sentence in section 8.5.4.3 is revised by adding "back half of the filterable PM filter holder." Also, in section 8.5.4.3, sentences inadvertently omitted in the proposed rule are re-inserted. In section 9.10, the erroneous statement "You must purge the assembled train as described in sections 8.5.3.2 and 8.5.3.3." is corrected to reference section 8.5.3. Sections 10.3 and 10.4 are added to require calibration of the field balance used to weigh impingers and to require a multipoint calibration of the analytical balance. In section 10.3, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any better than one-half of the tolerance for the measurement. Sections 11.2.2.1, 11.2.2.2, 11.2.2.3, 11.2.2.4 and figure 7 are re-inserted.

D. Appendix P of Part 51

In appendix P of part 51, section 3.3, the erroneous reference to section 2.1 of Performance Specification 2 of appendix B of part 60 is corrected to section 6.1. Also, in section 3.3, the reference to the National Bureau of Standards is changed to the National Institute of Standards and Technology. In section 5.1.3, the erroneous reference to paragraph 4.1.4 is changed to reflect the correct reference to paragraphs 3.1.4 and 3.1.5.

E. General Provisions (Subpart A) of Part 60

In the General Provisions of part 60, section 60.8(f) is revised to require the reporting of specific emissions test data in test reports. These data elements are required regardless of whether the report is submitted electronically or in paper format. Note that revisions are made to the data elements (that were listed in the proposed rule) to provide clarity and to more appropriately define and limit the extent of elements reported for each test method included in a test report. These modifications ensure that emissions test reporting includes all data necessary to assess and assure the quality of the reported emissions data and that the reported information appropriately describes and identifies the specific unit covered by the emissions test report. Section 60.17(g) is revised to add ASTM D6911–15 to the list of incorporations by reference.

F. Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ) of Part 60

We received a request for a public hearing on this rule. We held a hearing in Research Triangle Park, North Carolina on October 8, 2015. All comments received at that hearing were related to our proposed revisions to subpart JJJJ, and a transcript of that hearing is available in the rule docket [EPA–HQ–OAR–2014–0292]. We also received a substantial number of comments from the public, both supportive of and in opposition to the revisions that we proposed.

At issue is the use of specific methodologies in a manner allowing a tester to speciate the volatile organic compounds (VOC) in the emissions and, from those speciated measurements, calculate a total VOC emissions rate using Fourier Transform Infrared Spectroscopy (FTIR using Method 320 or ASTM D6348–03) or Method 18, a measurement methodology that makes use of a combination of capture and analytical approaches. We proposed to remove Method 320 and ASTM D6348–03 as options for measuring VOC emissions under subpart JJJJ due to the lack of a consistent, demonstrable, and validated approach to measuring total VOC emissions. This decision was primarily due to the lack of a discrete list of compounds identified as those constituting the total VOC for the sources affected by subpart JJJJ. We proposed to eliminate the option to use these measurement approaches and leave Method 25A itself, a total hydrocarbon measurement approach, as the sole means of determining compliance with the total VOC emissions limits in the rule. We are concerned that implementation of Methods 320, ASTM D6348–03, and Method 18 does not provide proper and consistent quality assurance (QA) for compliance demonstration with total VOC measurement as required under subpart JJJJ.

Several commenters stated that prohibiting the use of FTIR to measure VOC and leaving Method 25A as the sole means of demonstrating compliance would result in an increased cost to industry. The commenters reasoned that this would decrease the number of tests that could be conducted in a single day because Method 25A requires more time to set up and run. We did not find compelling support for this argument. A properly conducted emissions test using FTIR technology and Method 320 or ASTM D6348–03 takes several hours to conduct, including time for equipment setup including the same sampling probe and heated sample transport line requirements as Method 25A, warmup which takes the same amount of time as Method 25A, conducting appropriate calibration and spiking data quality assessments very similar in duration to the required Method 25A calibration, actual source sampling time to span three 1-hour periods, leak tests, and post-test QA procedures common to each method. While it is possible to conduct two such test runs in a single 12- to 14-hour day, it is likewise possible to conduct two such test runs with Method 25A in that same time frame.

Several commenters also remarked that using FTIR is less complex, easier, and quicker than using Method 25A, but we do not find this argument sufficiently compelling to reverse our proposed revisions. We understand that while an experienced spectroscopist can operate an FTIR with relative ease as compared to a novice, the process of quality assuring emissions data measured by FTIR in accordance with Method 320 or ASTM D6348–03 is not a trivial matter. Calibration checks and matrix spiking of target compounds, including the "most difficult to recover" compound (as required by Method 320), is both challenging and time consuming due to the need to rule out interferences that may be caused by the emissions gas matrix while working to individually quantify each VOC in that matrix. In summation, we do not agree that the use of FTIR for quantification of total VOC is quick, easy or less expensive to conduct when compared with the use of Method 25A.

Several commenters provided information to the docket, and others stated individually during the public hearing that they have provided a list of VOC to the docket, or have compiled a list of VOC or recommend that EPA address the FTIR measurement issue through the agency providing a list of VOC that make up 95 percent of the emissions from natural gas-fired spark ignition (SI) engines. We agree with commenters that a list of VOC could be developed; however, we recognize that the list must represent total VOC (all the VOC that could be emitted from SI engines affected by subpart JJJJ), as that is the compliance requirement stated in the rule. We have not stated that 95 percent of the VOC emissions are the target goal for such a list. In a memo to the docket of this rule (Technical memorandum dated September 28, 2015, to Docket ID No. EPA–HQ–OAR–2014–0292 titled, "Proposal to remove Methods 18, 320, and ASTM D6348–03 as Acceptable Methods for Measuring Total VOC Under 40 CFR 60, Subpart JJJJ"), we state that we are actively seeking sufficient documentation to create a complete list of VOC to support a speciated hydrocarbon measurement approach such as FTIR and/or Method 18. We received data from commenters that moves us toward compiling such a list, but we did not receive sufficient demonstration that all VOC were represented in that list. Additionally, while we received information on VOC present in well-operated and controlled engines, the data does not include VOC that may be present largely during, or only during, poor performance periods and could, thereby, serve as key indicators of engines that are not well-operated, well-controlled, or in compliance with the applicable standard. Therefore, we remain unable to define a complete list of VOC that would need to be quantified by a speciated measurement approach to demonstrate that total VOC were measured during a compliance test. Even so, we are swayed by arguments such as those made in support of speciated measurement approaches, specifically their ability to account for methane and ethane as separate quantifiable emissions.

Two commenters remarked that they do not believe that Method 25A is able to produce accurate total VOC values because there is an inherent issue with the "difference or subtraction" method when applied to compressed natural gas (CNG)-based emissions. We reviewed the data provided by the commenters in this respect and did not arrive at the same conclusion. Our review shows that the commenters appear to double-count some of the emissions in arriving at their results and do not present compelling evidence that demonstrates the ability of a hydrocarbon cutter to remove all ethane from the measured gas.

Two commenters stated that FTIR can measure real-time non-methane, non-ethane VOC. We agree that this speciated approach is capable of providing emissions data for methane, ethane, and other VOC in near-real-time.

One commenter recommended that we allow FTIR methods since FTIR is the only technology that can provide a mass emissions rate and since FTIR does not have a zero drift nor calibration drift problem like Method 25A. Subpart JJJJ requires the calculation of a mass emissions rate on a propane basis and Method 25A, calibrated with propane and using the molecular weight of propane (44.01 lb/lb-mol) for mass emissions calculations, is quite capable of providing a mass emissions rate appropriate for determination of compliance with the VOC standards in subpart JJJJ. In regard to zero drift, Method 25A has QA and quality control (QC) criteria to limit the acceptance of data where instrument drift is excessive.

Three commenters noted that we did not provide supporting data for proposing to disallow FTIR methods that have been allowed under subpart JJJJ for the past 7 years. We submitted a supporting memo to the docket (Technical memorandum dated September 28, 2015, to Docket ID No. EPA–HQ–OAR–2014–0292 titled, "Proposal to Remove EPA Methods 18, 320, and ASTM D6348–03 as Acceptable Methods for Measuring Total VOC Under 40 CFR 60, Subpart JJJJ") that provides the reasoning and justification for our proposal.

One commenter recommended that changes to subpart JJJJ test methods be proposed as a separate rulemaking under subpart JJJJ. We believe that we have the authority to make necessary or otherwise appropriate changes to a specific test procedure or pollutant measurement requirement in a rule through this periodic rulemaking.

One commenter agreed with our proposed position that FTIR should not be used to measure total VOC, but remarked that Method 18 should continue to be allowed since it allows direct measurement of VOC constituents using gas chromatography and does not rely on differential methods or require multiple test methods. We found the latter arguments and reasoning to be persuasive and compelling. Method 18 does contain provisions to screen and calibrate for VOC present in the emissions and thereby measure total VOC from a specific source. While this can be a complex and sometimes tedious undertaking, we recognize that it is an appropriate approach to measure total VOC from a specific source and are modifying the final rule language to reflect that this is allowable.

Two additional commenters agreed with our proposed position that the current FTIR methodologies are not adequately measuring total VOC. One of the commenters remarked that testers do not provide adequate total VOC results. The other commenter recommended only allowing FTIR if the QA is complete and accurate and if all VOC are proven to be accounted for. We are swayed by this commenter's support for complete QA/QC of data and stipulation that all VOC are proven to be accounted for. Although we do not currently possess sufficient data to compile a complete list of VOCs expected to be emitted from SI engines, we believe that where data with complete QA/QC are available, we may acquire sufficient data over time.

This action finalizes requirements to clarify the conduct of QA/QC procedures and report the QA/QC data with the emissions measurement data when applying Method 320 and ASTM D6348–03. We will revisit this decision and make a subsequent determination of the appropriateness for the use of Method 320 and/or ASTM–D6348 during the first risk and technology review evaluation for this sector.

In Table 2 of subpart JJJJ, the allowances to use Method 320 and ASTM D6348–03 are retained. The language requiring the reporting of specific QA/QC data when these test methods are used has been added to paragraph 60.4245(d).

The typographical error in the proposed Table 2 of subpart JJJJ is corrected; "methane cutter" is replaced with "hydrocarbon cutter" in paragraph (5) of section c.

G. Method 1 of Appendix A–1 of Part 60

In Method 1, section 11.2.1.2, the word "istances" is changed to "distances" in the second sentence, and the last two sentences in this section (inadvertently omitted in the proposed rule) are re-inserted. The second figure labeled Figure 1–2 is deleted because two figures labeled Figure 1–2 were inadvertently included.

H. Method 2 of Appendix A–1 of Part 60

In Method 2, instructions are given for conducting S-type pitot calibrations. Currently, the same equipment is commonly used for both Methods 2 and

2G (same S-type pitot), but the calibration procedure is slightly different in each method. Other key pieces that enhance the QA/QC of the calibrations are added to Method 2, and the amount of blockage allowed is reduced to improve calibration accuracy. To address these issues, changes are made to sections 6.7, 10.1.2.3, 10.1.3.4, 10.1.3.7, and 10.1.4.1.3 of Method 2. Sentences in section 6.7 (inadvertently omitted in the proposed rule) are re-inserted. In section 10.1.4.3, the erroneous reference to section 10.1.4.4 is corrected to section 12.4.4. The portion of Figure 2–10 labeled (b) is deleted because it is erroneous, and the label (a) is removed from the figure.

I. Method 2G of Appendix A–2 of Part 60

In Method 2G, instructions are given for conducting S-type pitot calibrations. Currently, the same equipment is commonly used for both Methods 2 and 2G (same S-type pitot), but the calibration procedure is slightly different in each method. Other key pieces that enhance the QA/QC of the calibrations are added to the method, and the amount of blockage allowed is reduced to tighten up calibration accuracy. Changes are made to sections 6.11.1, 6.11.2, 10.6.6, and 10.6.8 of Method 2G to address these issues. In section 10.6.6, the proposed language regarding recording rotational speed is revised based on a public comment.

J. Method 3C of Appendix A–2 of Part 60

In Method 3C, section 6.3 is revised to add subsections (6.3.1, 6.3.2, 6.3.3, 6.3.4, and 6.3.5) that clarify the requirements necessary to check analyzer linearity.

K. Method 4 of Appendix A–3 of Part 60

In Method 4, section 10.3 (Field Balance) is added to require calibration of the balance used to weigh impingers. In section 10.3, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any better than one-half of the tolerance for the measurement. Section 12.2.5, which gives another option for calculating the approximate moisture content, is added. Section 16.4 is revised to clarify that a fuel sample must be taken and analyzed to develop F-factors required by the alternative procedure. Also, in section 16.4, percent relative humidity is inadvertently defined as "calibrated hydrometer acceptable"; the word "hydrometer" is replaced with "hygrometer."

L. Method 5 of Appendix A–3 of Part 60

In Method 5, we erroneously finalized the reference to the Isostack metering system in 79 FR 11228. Therefore, this reference from section 6.1.1.9 is removed. Broadly applicable test method determinations or letters of assessments, regarding whether specific alternative metering equipment meets the specifications of the method as was our intent in the "Summary of Comments and Responses on Revisions to Test Methods and Testing Regulations" (EPA–HQ–OAR–2010–0114–0045), will continue to be issued. In section 6.1.1.9, the parenthetical phrase "(rechecked at least one point after each test)" is removed since the requirements for temperature sensors are given in section 10.5 of Method 5. The phrase "after ensuring that all joints have been wiped clean of silicone grease" is removed from section 8.7.6.2.5. Sections 10.7 and 10.8 are added to require calibration of the balance used to weigh impingers and to require a multipoint calibration of the analytical balance. In section 10.7, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any better than one-half of the tolerance for the measurement. In section 10.8, the proposed language is revised to "Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1 g and 5 g."

M. Method 5H of Appendix A–3 of Part 60

In Method 5H, sections 10.4 and 10.5 are added to require calibration of the field balance used to weigh impingers and to require a multipoint calibration of the analytical balance. In section 10.4, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any better than one-half of the tolerance for the measurement. In section 10.5, the proposed language is revised to "Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1 g and 5 g."

N. Method 5I of Appendix A–3 of Part 60

In Method 5I, sections 10.1 and 10.2 are added to require calibration of the field balance used to weigh impingers and to require a multipoint calibration of the analytical balance. In section 10.1, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any more accurate than one-half of the tolerance for the measurement. In section 10.2, the proposed language is revised to "Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1 g and 5 g."

O. Method 6C of Appendix A–4 of Part 60

In Method 6C, the language detailing the methodology for performing interference checks in section 8.3 is revised to clarify and streamline the procedure. While we continue to believe that quenching can be an issue for fluorescence analyzers, the language regarding quenching that was promulgated on February 27, 2014, has raised many questions and is being removed. It is our opinion that the interference check, if done properly, using sulfur dioxide (SO_2) and both levels of carbon dioxide (CO_2) as specified in Table 7E–3 of Method 7E, will evaluate effects due to quenching. We will continue to evaluate data as it becomes available and propose additional language, as needed. However, if you believe that quenching is an issue, we recommend that you repeat the interference check using the CO_2 values specified in Table 7E–3 and an SO_2 value similar to your measured stack emissions.

P. Method 7E of Appendix A–4 of Part 60

In Method 7E, section 8.1.2, the requirements/specifications for the 3-point sampling line are revised to be consistent with Performance Specification 2; the new requirement is 0.4, 1.2, and 2.0 meters.

The language in section 8.2.7 regarding quenching that was promulgated on February 27, 2014, has raised many questions, and is being removed at this time. It is our opinion that the interference check, if done properly, using the gas levels specified in Table 7E–3 of Method 7E, will evaluate analyzer bias. We will continue to evaluate data as it becomes available and propose additional language in the future as needed. However, if you feel that analyzer bias is an issue, we recommend that you repeat the interference check using calibration gas values similar to your measured stack emissions. The language in section 8.2.7 requiring that the interference check be performed periodically or after major repairs has also been removed to be consistent with the language found in section 8.2.7 (2), which states "This interference test is valid for the life of the instrument unless major analytical components (*e.g.,* the detector) are replaced with different model parts."

The word "equations" is replaced with "equation" in the sentence in section 12.8 that reads "If desired, calculate the total NO_X concentration with a correction for converter efficiency using equation 7E–8."

We requested and received comments on the stratification test in Method 7E. We will consider the comments and propose changes in a future rulemaking.

Q. Method 10 of Appendix A–4 of Part 60

In Method 10, sections 6.2.5 and 8.4.2 are revised, and section 6.2.6 is added to clarify the types of sample tanks allowed for integrated sampling.

R. Methods 10A and 10B of Appendix A–4 of Part 60

Methods 10A and 10B are revised to allow the use of sample tanks as an alternative to flexible bags for sample collection.

S. Method 15 of Appendix A–5 of Part 60

In Method 15, section 8.3.2 is revised to clarify the calibrations that represent partial calibration.

T. Method 16C of Appendix A–6 of Part 60

In Method 16C, section 12.2, equation 16C–1 is revised to replace C_v (manufacturer certified concentration of a calibration gas in ppmv SO_2) in the denominator with CS (calibration span in ppmv). The definition of CS is added to the nomenclature in section 12.1, and the definition of C_v is retained in the nomenclature in section 12.1 because C_v is in the numerator of equation 16C–1.

U. Method 18 of Appendix A–6 of Part 60

In Method 18, section 8.2.1.5.2.3 is removed because the General Provisions to Part 60 already include a requirement to analyze two field audit samples as described in section 9.2.

V. Method 25C of Appendix A–7 of Part 60

In Method 25C, section 9.1 is corrected to reference section 8.4.2 instead of section 8.4.1. Section 11.2 is deleted because the audit sample analysis is now covered under the General Provisions to Part 60. The nomenclature is revised in section 12.1, and equation 25C–2 is revised in section 12.3. Sections 12.4, 12.5, 12.5.1, and 12.5.2 are added to incorporate equations to correct sample concentrations for ambient air dilution. In section 12.5.2, the reference to equation 25C–4 is corrected to 25C–5.

W. Method 26 of Appendix A–8 of Part 60

In Method 26, section 13.3 is revised to indicate the correct method detection limit; the equivalent English unit for the metric quantity is added.

X. Method 26A of Appendix A–8 of Part 60

In Method 26A, language regarding minimizing chloride interferences is added to section 4.3. Also in section 4.3, the first sentence (inadvertently omitted in the proposed rule) is re-inserted.

Sections 6.1.7 and 8.1.5 are not changed in this final rule. The language in the proposed rule that revised the required probe and filter temperature requirements in sections 6.1.7 and 8.1.5 to allow a lower probe and filter temperature was an error.

In section 8.1.6, the typographical error, ". . . between 120 and 134 °C (248 and 275 °F . . ."), is corrected to ". . . between 120 and 134 °C (248 and 273 °F . . .").

Y. Method 29 of Appendix A–8 of Part 60

In Method 29, section 8.2.9.3 is revised to require rinsing impingers containing permanganate with hydrogen chloride (HCl) to ensure consistency with the application of Method 29 across various stationary source categories and because there is evidence that HCl is needed to release the mercury (Hg) bound in the precipitate from the permanganate. Sections 10.4 and 10.5 are added to require calibration of the field balance used to weigh impingers and to require a multipoint calibration of the analytical balance. In section 10.4, the proposed language is revised to allow the use of a Class 6 tolerance weight (or better) in lieu of the proposed Class 3 (or better) tolerance weight for checking the field balance accuracy because the calibration weight does not need to be any better than one-half of the tolerance for the measurement.

Z. Method 30A of Appendix A–8 of Part 60

In Method 30A, the heading of section 8.1 is changed from "Sample Point Selection" to "Selection of Sampling Sites and Sampling Points."

AA. Method 30B of Appendix A–8 of Part 60

In Method 30B, the heading of section 8.1 is changed from "Sample Point Selection" to "Selection of Sampling Sites and Sampling Points." In section 8.3.3.8, the reference to ASTM WK223 is changed to ASTM D6911–15, and the last two sentences in this section (inadvertently omitted in the proposed rule) are re-inserted.

BB. Appendix B to Part 60—Performance Specifications

In the index to appendix B to part 60, Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources is added.

CC. Performance Specification 1 of Appendix B of Part 60

In Performance Specification 1, paragraph 8.1(2)(i) is revised in order to not limit the location of a continuous opacity monitoring system (COMS) to a point at least four duct diameters downstream and two duct diameters upstream from a control device or flow disturbance. Paragraph 8.1(2)(i) refers to paragraphs 8.1(2)(ii) and 8.1(2)(iii) for additional options.

DD. Performance Specification 2 of Appendix B of Part 60

In Performance Specification 2, the definition of span value is revised in section 3.11. The sentence, "For spans less than 500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm such that the equivalent emissions concentration is not less than 30 percent of the selected span value.", is added to section 3.11. Also, in section 6.1.1, the data recorder language is revised. In section 6.1.2, the term "high-level" is changed to "span" to be consistent with the definition of span value discussed above. In section 16.3.2, the characters "&verbar;dverbar" are replaced with $\overline{d}$ which is the average difference between responses and the concentration/responses. In section 18, Table 2–2 is detached from Figure 2–1, and the figure is clearly labeled as "Calibration Drift Determination."

EE. Performance Specification 3 of Appendix B of Part 60

In Performance Specification 3, section 13.2 is revised to clarify how to calculate relative accuracy. The absolute value symbol is added to the proposed definition of absolute value of the mean of the differences.

FF. Performance Specification 4A of Appendix B of Part 60

In Performance Specification 4A, the response time test procedure in sections 8.3 and 8.3.1 is revised. In section 8.3.1, the next to the last sentence is reworded to "Repeat the entire procedure until you have three sets of data to determine the mean upscale and downscale response times." Also, the proposed response time requirement in section 13.3 is revised to 240 seconds.

GG. Performance Specification 11 of Appendix B of Part 60

In Performance Specification 11, equations 11–1 and 11–2 are revised in section 12.1, and the response range is used in lieu of the upscale value in section 13.1. In section 12.1, the sentence in paragraph (3) that was inadvertently omitted is re-inserted.

HH. Performance Specification 15 of Appendix B of Part 60

In Performance Specification 15, the statement, "An audit sample is obtained from the Administrator," is deleted from paragraph 9.1.2. Also, in Performance Specification 15, reserved sections 14.0 and 15.0 are added.

II. Performance Specification 16 of Appendix B of Part 60

In Performance Specification 16, Table 16–1 is changed to be consistent with conventional statistical applications; the values listed in the column labelled n − 1 (known as degrees of freedom) are corrected to coincide with standard t-tables, and the footnote is clarified. Section 12.2.3 is revised for selection of n − 1 degrees of freedom.

JJ. Procedure 2 of Appendix F of Part 60

In Procedure 2, equations 2–2 and 2–3 in section 12.0 are revised to correctly define the denominator when calculating calibration drift. Also, equation 2–4 in section 12.0 is revised to correctly define the denominator when calculating accuracy. The proposed equation 2–4 is revised to:

$$\text{Accuracy} = \frac{|V_M - V_R|}{V_R} \times 100$$

KK. General Provisions (Subpart A) of Part 61

Section 61.13(e)(1)(i) of the General Provisions of Part 61 is revised to add Methods 30A and 30B to the list of methods not requiring the use of audit samples.

LL. Method 107 of Appendix B of Part 61

In Method 107, the term "Geon" is deleted from the heading in section 11.7.3.

MM. General Provisions (Subpart A) of Part 63

In the General Provisions of Part 63, section 63.7(c)(2)(iii)(A) is revised to add Methods 30A and 30B to the list of methods not requiring the use of audit samples.

Section 63.7(g)(2) is revised to require the reporting of specific emissions test data in test reports. These data elements are required regardless of whether the report is submitted electronically or in paper format. Revisions are made to the list of proposed data elements to provide clarity and to more appropriately define and limit the extent of elements reported for each test method included in a test report. These modifications ensure that emissions test reporting includes all data necessary to assess and assure the quality of the reported emissions data and that the reported information appropriately describes and identifies the specific unit covered by the emissions test report.

NN. Method 320 of Appendix A of Part 63

In Method 320, sections 13.1, 13.4, and 13.4.1 are revised to indicate the correct Method 301 reference.

IV. Public Comments on the Proposed Rule

Forty-two comment letters were received on the proposed rule. The public comments and the agency's responses are summarized in the Summary of Comments and Responses document located in the docket for this rule. See the **ADDRESSES** section of this preamble.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not add information collection requirements; it makes corrections and updates to existing testing methodology. In addition, this action clarifies performance testing requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action will not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This action simply corrects and updates existing testing regulations. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. The EPA used ASTM D6911–15 for packaging and shipping samples in Method 30B. The ASTM D6911–15 standard provides guidance on the selection of procedures for proper packaging and shipment of environmental samples to the laboratory for analysis to ensure compliance with appropriate regulatory programs and protection of sample integrity during shipment.

The EPA used ASTM E617–13 for laboratory weights and precision mass standards in Methods 4, 5, 5H, 5I, 29, and 202. The ASTM E617–13 standard covers weights and mass standards used in laboratories for specific classes.

The ASTM D6911–15 and ASTM E617–13 standards were developed and adopted by the American Society for Testing and Materials (ASTM). These standards may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is a technical correction to previously promulgated regulatory actions and does not have an impact on human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each house of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Volatile organic compounds.

40 CFR Parts 61 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: August 5, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends title 40, chapter I of the Code of Federal Regulations as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Amend appendix M to part 51 as follows:

■ a. Revise section 4.0a.

■ b. Revise section 12.5, equations 8 and 9, in Method 201A.

■ c. In Method 202:

■ i. Add section 3.8.

■ ii. Revise sections 8.5.4.3 and 9.10.

■ iii. Add sections 10.3, 10.4, 11.2.2.1, 11.2.2.2, 11.2.2.3, and 11.2.2.4.

■ iv. Add Figure 7 to section 18.0.

The additions and revisions read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

4.0 * * *

a. The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60 of this chapter, Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60, Methods 18 and 19 of appendix A–6 of part 60, Methods 20, 22, and 25A of appendix A–7 of part 60, Methods 30A and 30B of appendix A–8 of part 60, and Methods 303, 318, 320, and 321 of appendix A of part 63 of this chapter. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. "Commercially available" means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *http://www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emissions test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and then report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field, and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request and the compliance authority may grant a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

Method 201A—Determination of PM_{10} and $PM_{2.5}$ Emissions From Stationary Sources (Constant Sampling Rate Procedure)

* * * * *

12.5 * * *

For N_{re} less than 3,162:

$$Q_{IV} = 0.0060639 \left[\frac{\mu}{C^{0.4242}}\right] \left[\frac{P_S M_W}{T_S}\right]^{-0.5759} \left[\frac{1}{D_{50}}\right]^{0.8481} \qquad \text{(Eq. 8)}$$

For N_{re} greater than 3,162:

$$Q_{IV} = 0.007657 \left[\frac{\mu}{C^{0.6205}}\right] \left[\frac{P_S M_W}{T_S}\right]^{-0.3795} \left[\frac{1}{D_{50}}\right]^{01.241} \qquad \text{(Eq. 9)}$$

* * * * *

Method 202—Dry Impinger Method for Determining Condensable Particulate Emissions From Stationary Sources

* * * * *

3.8 *ASTM E617–13.* ASTM E617–13 "Standard Specification for Laboratory Weights and Precisions Mass Standards," approved May 1, 2013, was developed and adopted by the American Society for Testing and Materials (ASTM). The standards cover weights and mass standards used in laboratories for specific classes. The ASTM E617–13 standard has been approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The standard may be obtained from *http://www.astm.org* or from the ASTM at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. All approved material is available for inspection at EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460, telephone number 202–566–1744. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulattions/ibr_locations.html.*

* * * * *

8.5.4.3 *CPM Container #2, Organic rinses.* Follow the water rinses of the back half of the filterable PM filter holder, probe extension, condenser, each impinger, and all of the connecting glassware and front half of the CPM filter with an acetone rinse. Recover the acetone rinse into a clean, leak-proof container labeled with test identification and "CPM Container #2, Organic Rinses." Then repeat the entire rinse procedure with two rinses of hexane, and save the hexane rinses in the same container as the acetone rinse (CPM Container #2). Mark the liquid level on the jar.

* * * * *

9.10 Field Train Recovery Blank. You must recover a minimum of one field train blank for each source category tested at the facility. You must recover the field train blank after the first or second run of the test. You must assemble the sampling train as it will be used for testing. Prior to the purge, you must add 100 ml of water to the first impinger and record this data on Figure 4. You must purge the assembled train as described in section 8.5.3. You must recover field train blank samples as described in section 8.5.4. From the field sample weight, you will subtract the condensable particulate mass you determine with this blank train or 0.002 g (2.0 mg), whichever is less.

* * * * *

10.3 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" Class 6 (or better). Daily before use, the field balance must measure the weight within ± 0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

10.4 Analytical Balance Calibration. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first use, and semiannually thereafter. The calibration of the analytical balance must be conducted using ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" Class 2 (or better) tolerance weights. Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1g and 5g. If the scale cannot reproduce the value of the calibration weight to within 0.5mg of the certified mass, perform corrective measures, and conduct the multipoint calibration before use.

* * * * *

11.2.2.1 Determine the inorganic fraction weight. Transfer the aqueous fraction from the extraction to a clean 500-ml or smaller beaker. Evaporate to no less than 10 ml liquid on a hot plate or in the oven at 105 °C and allow to dry at room temperature (not to exceed 30 °C (85 °F)). You must ensure that water and volatile acids have completely evaporated before neutralizing nonvolatile acids in the sample. Following evaporation, desiccate the residue for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh at intervals of at least 6 hours to a constant weight. (See section 3.0 for a definition of constant weight.) Report results to the nearest 0.1 mg on the CPM Work Table (see Figure 6 of section 18) and proceed directly to section 11.2.3. If the residue cannot be weighed to constant weight, re-dissolve the residue in 100 ml of deionized distilled ultra-filtered water that contains 1 ppmw (1 mg/L) residual mass or less and continue to section 11.2.2.2.

11.2.2.2 Use titration to neutralize acid in the sample and remove water of hydration. If used, calibrate the pH meter with the neutral and acid buffer solutions. Then titrate the sample with 0.1N NH_4OH to a pH of 7.0, as indicated by the pH meter or colorimetric indicator. Record the volume of titrant used on the CPM Work Table (see Figure 6 of section 18).

11.2.2.3 Using a hot plate or an oven at 105 °C, evaporate the aqueous phase to approximately 10 ml. Quantitatively transfer the beaker contents to a clean, 50-ml pre-tared weighing tin and evaporate to dryness at room temperature (not to exceed 30 °C (85 °F)) and pressure in a laboratory hood. Following evaporation, desiccate the residue for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh at intervals of at least 6 hours to a constant weight. (See section 3.0 for a definition of constant weight.) Report results to the nearest 0.1 mg on the CPM Work Table (see Figure 6 of section 18).

11.2.2.4 Calculate the correction factor to subtract the NH_4^+ retained in the sample using Equation 1 in section 12.

* * * * *

18.0 *Tables, Diagrams, Flowcharts and Validation Data*

* * * * *

BILLING CODE 6560–50–C

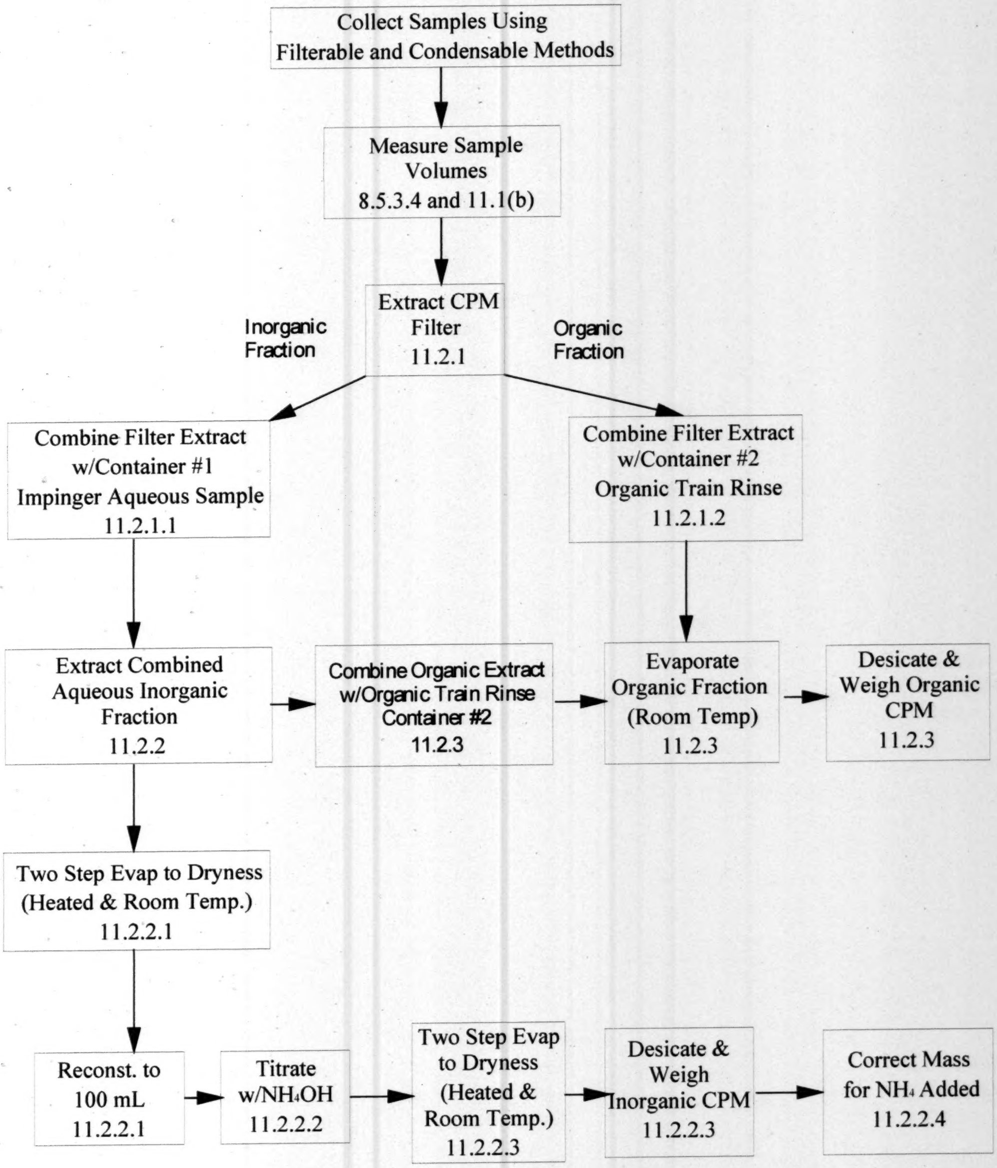
Collect Samples Using Filterable and Condensable Methods
Measure Sample Volumes 8.5.3.4 and 11.1(b)
Extract CPM Filter 11.2.1
Inorganic Fraction
Organic Fraction
Combine Filter Extract w/Container #1 Impinger Aqueous Sample 11.2.1.1
Combine Filter Extract w/Container #2 Organic Train Rinse 11.2.1.2
Extract Combined Aqueous Inorganic Fraction 11.2.2
Combine Organic Extract w/Organic Train Rinse Container #2 11.2.3
Evaporate Organic Fraction (Room Temp) 11.2.3
Desicate & Weigh Organic CPM 11.2.3
Two Step Evap to Dryness (Heated & Room Temp.) 11.2.2.1
Reconst. to 100 mL 11.2.2.1
Titrate w/NH_4OH 11.2.2.2
Two Step Evap to Dryness (Heated & Room Temp.) 11.2.2.3
Desicate & Weigh Inorganic CPM 11.2.2.3
Correct Mass for NH_4 Added 11.2.2.4

Figure 7. CPM Sample Processing Flow Chart

BILLING CODE 6560–50–P

* * * * *

■ 3. Revise sections 3.3 and 5.1.3 of appendix P to part 51 to read as follows:

Appendix P to Part 51—Minimum Emission Monitoring Requirements

* * * * *

3.3 *Calibration Gases.* For nitrogen oxides monitoring systems installed on fossil fuel-fired steam generators, the pollutant gas used to prepare calibration gas mixtures (section 6.1, Performance Specification 2, appendix B, part 60 of this chapter) shall be nitric oxide (NO). For nitrogen oxides monitoring systems installed on nitric acid plants, the pollutant gas used to prepare calibration gas mixtures (section 6.1, Performance Specification 2, appendix B, part 60 of this chapter) shall be nitrogen dioxide (NO_2). These gases shall also be used for daily checks under paragraph 3.7 of this appendix as applicable. For sulfur dioxide monitoring systems installed on fossil fuel-fired steam generators or sulfuric acid plants, the pollutant gas used to prepare calibration gas mixtures (section 6.1, Performance Specification 2, appendix B, part 60 of this chapter) shall be sulfur dioxide (SO_2). Span and zero gases should be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every 6 months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in appendix A, part 60 of this chapter as follows: for SO_2, use Reference Method 6; for nitrogen oxides, use Reference Method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.

* * * * *

5.1.3 The values used in the equations under paragraph 5.1 are derived as follows:

E = pollutant emission, g/million cal (lb/million BTU),

C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole). M = 64 for sulfur dioxide and 46 for oxides of nitrogen.

$\%O_2$, $\%CO_2$ = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under paragraphs 3.1.4 and 3.1.5 of this appendix.

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 4. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

■ 5. In § 60.8, revise paragraph (f) to read as follows:

§ 60.8 Performance tests.

* * * * *

(f) Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method.

(1) Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(2) Contents of report (electronic or paper submitted copy). Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, the report for a performance test shall include the elements identified in paragraphs (f)(2)(i) through (vi) of this section.

(i) General identification information for the facility including a mailing address, the physical address, the owner or operator or responsible official (where applicable) and his/her email address, and the appropriate Federal Registry System (FRS) number for the facility.

(ii) Purpose of the test including the applicable regulation(s) requiring the test, the pollutant(s) and other parameters being measured, the applicable emission standard and any process parameter component, and a brief process description.

(iii) Description of the emission unit tested including fuel burned, control devices, and vent characteristics; the appropriate source classification code (SCC); the permitted maximum process rate (where applicable); and the sampling location.

(iv) Description of sampling and analysis procedures used and any modifications to standard procedures, quality assurance procedures and results, record of process operating conditions that demonstrate the applicable test conditions are met, and values for any operating parameters for which limits were being set during the test.

(v) Where a test method requires you record or report, the following shall be included: Record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, chain-of-custody documentation, and example calculations for reported results.

(vi) Identification of the company conducting the performance test including the primary office address, telephone number, and the contact for this test program including his/her email address.

* * * * *

■ 6. In § 60.17:

■ a. Revise paragraph (h)(180).

■ b. Redesignate paragraphs (h)(200) through (h)(206) as paragraphs (h)(202) through (h)(208).

■ c. Redesignate paragraphs (h)(190) through (h)(199) as (h)(191) through (h)(200).

■ d. Add new paragraphs (h)(190) and (h)(201).

The additions and revisions read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(180) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, (Approved October 1, 2003), IBR approved for § 60.73a(b), table 7 to subpart IIII, table 2 to subpart JJJJ, and § 60.4245(d).

* * * * *

(190) ASTM D6911–15, Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis, approved January 15, 2015, IBR approved for appendix A–8: Method 30B.

* * * * *

(201) ASTM E617–13, Standard Specification for Laboratory Weights and Precision Mass Standards, approved May 1, 2013, IBR approved for appendix A–3: Methods 4, 5, 5H, 5I, and appendix A–8: Method 29.

* * * * *

Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

■ 7. Revise § 60.4245(d) to read as follows:

§ 60.4245 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary SI internal combustion engine?

* * * * *

(d) Owners and operators of stationary SI ICE that are subject to performance testing must submit a copy of each performance test as conducted in § 60.4244 within 60 days after the test has been completed. Performance test reports using EPA Method 18, EPA Method 320, or ASTM D6348–03 (incorporated by reference—see 40 CFR 60.17) to measure VOC require reporting of all QA/QC data. For Method 18, report results from sections 8.4 and 11.1.1.4; for Method 320, report results from sections 8.6.2, 9.0, and 13.0; and for ASTM D6348–03 report results of all QA/QC procedures in Annexes 1–7.

* * * * *

■ 8. Revise Table 2 to subpart JJJJ of part 60 to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;.	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for NO_X. O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;.	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;.	(3) Method 2 or 2C of 40 CFR part 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
		v. Measure NO_X at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 7E of 40 CFR part 60, appendix A–4, ASTM Method D6522–00 (Reapproved 2005)[a d], Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;.	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for CO. O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;.	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;.	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Method 10 of 40 CFR part 60, appendix A4, ASTM Method D6522–00 (Reapproved 2005)[a d e], Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number/location of traverse points at the exhaust of the stationary internal combustion engine;.	(1) Method 1 or 1A of 40 CFR part 60, appendix A–1, if measuring flow rate.	(a) Alternatively, for VOC, O_2, and moisture measurement, ducts ≤6 inches in diameter may be sampled at a single point located at the duct centroid and ducts >6 and ≤12 inches in diameter may be sampled at 3 traverse points located at 16.7, 50.0, and 83.3% of the measurement line ('3-point long line'). If the duct is >12 inches in diameter *and* the sampling port location meets the two and half-diameter criterion of Section 11.1.1 of Method 1 of 40 CFR part 60, Appendix A, the duct may be sampled at '3-point long line'; otherwise, conduct the stratification testing and select sampling points according to Section 8.1.2 of Method 7E of 40 CFR part 60, Appendix A.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;.	(2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A–2 or ASTM Method D6522–00 (Reapproved 2005)[a d].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust;.	(3) Method 2 or 2C of 40 CFR 60, appendix A–1 or Method 19 of 40 CFR part 60, appendix A–7.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and.	(4) Method 4 of 40 CFR part 60, appendix A–3, Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		v. Measure VOC at the exhaust of the stationary internal combustion engine; if using a control device, the sampling site must be located at the outlet of the control device.	(5) Methods 25A and 18 of 40 CFR part 60, appendices A–6 and A–7, Method 25A with the use of a hydrocarbon cutter as described in 40 CFR 1065.265, Method 18 of 40 CFR part 60, appendix A–6[c e], Method 320 of 40 CFR part 63, appendix A[e], or ASTM Method D6348–03[d e].	(d) Results of this test consist of the average of the three 1-hour or longer runs.

[a] Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.

[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B. AMSE PTC 19.10–1981 incorporated by reference, see 40 CFR 60.17

[c] You may use EPA Method 18 of 40 CFR part 60, appendix A–6, provided that you conduct an adequate pre-survey test prior to the emissions test, such as the one described in OTM 11 on EPA's Web site (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).

[d] Incorporated by reference; see 40 CFR 60.17.

[e] You must meet the requirements in § 60.4245(d).

■ 9. In appendix A–1 to part 60:

■ a. Revise section 11.2.1.2 in Method 1.

■ b. Remove Figure 1–2 in section 17.0 after the table entitled "Table 1–1 Cross-Section Layout for Rectangular Stacks" in Method 1.

■ c. Revise sections 6.7, 10.1.2.3, 10.1.3.4, 10.1.3.7, 10.1.4.1.3, 10.1.4.3, and Figure 2–10 in section 17.0 in Method 2.

The revisions read as follows:

Appendix A–1 to Part 60—Test Methods 1 Through 2F

* * * * *

Method 1-Sample and Velocity Traverses for Stationary Sources

* * * * *

11.2.1.2 When the eight- and two-diameter criterion cannot be met, the minimum number of traverse points is determined from Figure 1–1. Before referring to the figure, however, determine the distances from the measurement site to the nearest upstream and downstream disturbances, and divide each distance by the stack diameter or equivalent diameter, to determine the distance in terms of the number of duct diameters. Then, determine from Figure 1–1 the minimum number of traverse points that corresponds:

(1) To the number of duct diameters upstream; and

(2) To the number of diameters downstream. Select the higher of the two minimum numbers of traverse points, or a greater value, so that for circular stacks, the number is a multiple of 4, and for rectangular stacks, the number is one of those shown in Table 1–1.

* * * * *

Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)

* * * * *

6.7 Calibration Pitot Tube. Calibration of the Type S pitot tube requires a standard pitot tube for a reference. When calibration of the Type S pitot tube is necessary (see Section 10.1), a standard pitot tube shall be used for a reference. The standard pitot tube shall, preferably, have a known coefficient, obtained directly from the National Institute of Standards and Technology (NIST), Gaithersburg, MD 20899, (301) 975–2002; or by calibration against another standard pitot tube with a NIST-traceable coefficient. Alternatively, a standard pitot tube designed according to the criteria given in sections 6.7.1 through 6.7.5 below and illustrated in Figure 2–5 (see also References 7, 8, and 17 in section 17.0) may be used. Pitot tubes designed according to these specifications will have baseline coefficients of 0.99 ±0.01.

* * * * *

10.1.2.3 The flow system shall have the capacity to generate a test-section velocity around 910 m/min (3,000 ft/min). This velocity must be constant with time to guarantee constant and steady flow during the entire period of calibration. A centrifugal fan is recommended for this purpose, as no flow rate adjustment for back pressure of the fan is allowed during the calibration process. Note that Type S pitot tube coefficients obtained by single-velocity calibration at 910 m/min (3,000 ft/min) will generally be valid to ±3 percent for the measurement of velocities above 300 m/min (1,000 ft/min) and to ±6 percent for the measurement of velocities between 180 and 300 m/min (600 and 1,000 ft/min). If a more precise correlation between the pitot tube coefficient (Cp) and velocity is desired, the flow system should have the capacity to generate at least four distinct, time-invariant test-section velocities covering the velocity range from 180 to 1,500 m/min (600 to 5,000 ft/min), and calibration data shall be taken at regular velocity intervals over this range (see References 9 and 14 in section 17.0 for details).

* * * * *

10.1.3.4 Read Δp_{std}, and record its value in a data table similar to the one shown in Figure 2–9. Remove the standard pitot tube from the duct, and disconnect it from the manometer. Seal the standard entry port. Make no adjustment to the fan speed or other wind tunnel volumetric flow control device between this reading and the corresponding Type S pitot reading.

* * * * *

10.1.3.7 Repeat Steps 10.1.3.3 through 10.1.3.6 until three pairs of Δp readings have been obtained for the A side of the Type S pitot tube, with all the paired observations conducted at a constant fan speed (no changes to fan velocity between observed readings).

* * * * *

10.1.4.1.3 For Type S pitot tube combinations with complete probe assemblies, the calibration point should be located at or near the center of the duct; however, insertion of a probe sheath into a small duct may cause significant cross-sectional area interference and blockage and yield incorrect coefficient values (Reference 9 in section 17.0). Therefore, to minimize the blockage effect, the calibration point may be a few inches off-center if necessary, but no closer to the outer wall of the wind tunnel than 4 inches. The maximum allowable blockage, as determined by a projected-area model of the probe sheath, is 2 percent or less of the duct cross-sectional area (Figure

2–10a). If the pitot and/or probe assembly blocks more than 2 percent of the cross-sectional area at an insertion point only 4 inches inside the wind tunnel, the diameter of the wind tunnel must be increased.

* * * * *

10.1.4.3 For a probe assembly constructed such that its pitot tube is always used in the same orientation, only one side of the pitot tube needs to be calibrated (the side which will face the flow). The pitot tube must still meet the alignment specifications of Figure 2–2 or 2–3, however, and must have an average deviation (σ) value of 0.01 or less (see section 12.4.4).

* * * * *

17.0 Tables, Diagrams, Flowcharts, and Validation Data

* * * * *

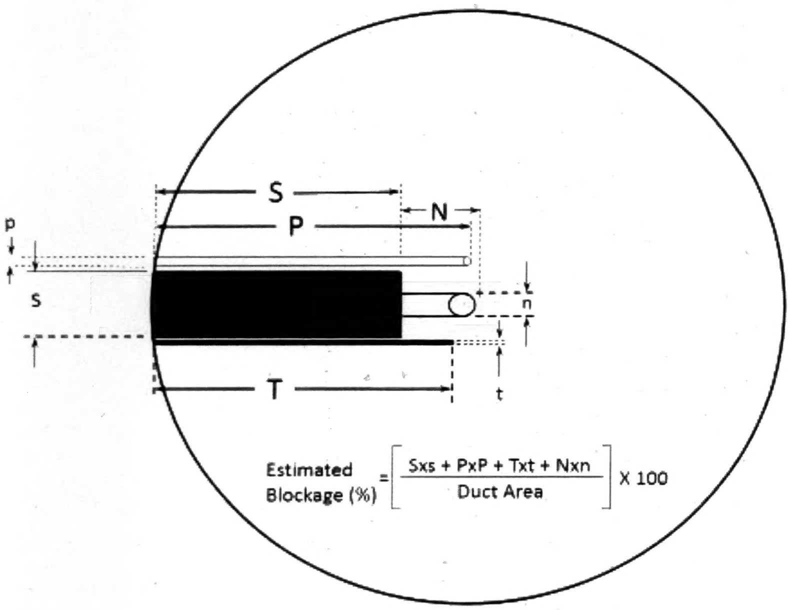
S
P
N
p
s
n
t
T
Estimated Blockage (%) = [Sxs + PxP + Txt + Nxn / Duct Area] X 100

Figure 2-10. Projected-area model for a typical pitot tube assembly.

* * * * *

■ 10. In appendix A–2 to part 60:
■ a. Revise sections 6.11.1, 6.11.2, 10.6.6, and 10.6.8 in Method 2G.
■ b. Revise section 6.3 in Method 3C.
■ c. Add sections 6.3.1, 6.3.2, 6.3.3, 6.3.4, and 6.3.5 in Method 3C.

The revisions and additions read as follows:

Appendix A–2 to Part 60—Test Methods 2G Through 3C

* * * * *

Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate With Two-Dimensional Probes

* * * * *

6.11.1 Test section cross-sectional area. The flowing gas stream shall be confined within a circular, rectangular, or elliptical duct. The cross-sectional area of the tunnel must be large enough to ensure fully developed flow in the presence of both the calibration pitot tube and the tested probe. The calibration site, or "test section," of the wind tunnel shall have a minimum diameter of 30.5 cm (12 in.) for circular or elliptical duct cross-sections or a minimum width of 30.5 cm (12 in.) on the shorter side for rectangular cross-sections. Wind tunnels shall meet the probe blockage provisions of this section and the qualification requirements prescribed in section 10.1. The projected area of the portion of the probe head, shaft, and attached devices inside the wind tunnel during calibration shall represent no more than 2 percent of the cross-sectional area of the tunnel. If the pitot and/or probe assembly blocks more than 2 percent of the cross-sectional area at an insertion point only 4 inches inside the wind tunnel, the diameter of the wind tunnel must be increased.

6.11.2 Velocity range and stability. The wind tunnel should be capable of achieving and maintaining a constant and steady velocity between 6.1 m/sec and 30.5 m/sec (20 ft/sec and 100 ft/sec) for the entire calibration period for each selected calibration velocity. The wind tunnel shall produce fully developed flow patterns that are stable and parallel to the axis of the duct in the test section.

* * * * *

10.6.6 Read the differential pressure from the calibration pitot tube (ΔP_{std}), and record its value. Read the barometric pressure to within ±2.5 mm Hg (±0.1 in. Hg) and the temperature in the wind tunnel to within 0.6 °C (1 °F). Record these values on a data form similar to Table 2G–8. Record the rotational speed of the fan or indicator of wind tunnel velocity control (damper setting, variac rheostat, etc.) and make no adjustment to fan speed or wind tunnel velocity control between this observation and the Type S probe reading.

* * * * *

10.6.8 Take paired differential pressure measurements with the calibration pitot tube and tested probe (according to sections 10.6.6 and 10.6.7). The paired measurements in each replicate can be made either simultaneously (*i.e.*, with both probes in the wind tunnel) or by alternating the measurements of the two probes (*i.e.*, with only one probe at a time in the wind tunnel). Adjustments made to the fan speed or other changes to the system designed to change the air flow velocity of the wind tunnel between observation of the calibration pitot tube (ΔP_{std}) and the Type S pitot tube invalidates the reading and the observation must be repeated.

* * * * *

Method 3C—Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen From Stationary Sources

* * * * *

6.3 Analyzer Linearity Check and Calibration. Perform this test before sample analysis.

6.3.1 Using the gas mixtures in section 5.1, verify the detector linearity over the range of suspected sample concentrations with at least three concentrations per compound of interest. This initial check may also serve as the initial instrument calibration.

6.3.2 You may extend the use of the analyzer calibration by performing a single-point calibration verification. Calibration verifications shall be performed by triplicate injections of a single-point standard gas. The concentration of the single-point calibration must either be at the midpoint of the calibration curve or at approximately the source emission concentration measured during operation of the analyzer.

6.3.3 Triplicate injections must agree within 5 percent of their mean, and the average calibration verification point must agree within 10 percent of the initial calibration response factor. If these calibration verification criteria are not met, the initial calibration described in section 6.3.1, using at least three concentrations, must be repeated before analysis of samples can continue.

6.3.4 For each instrument calibration, record the carrier and detector flow rates, detector filament and block temperatures, attenuation factor, injection time, chart speed, sample loop volume, and component concentrations.

6.3.5 Plot a linear regression of the standard concentrations versus area values to obtain the response factor of each compound. Alternatively, response factors of uncorrected component concentrations (wet basis) may be generated using instrumental integration.

Note: Peak height may be used instead of peak area throughout this method.

* * * * *

■ 11. In appendix A–3 to part 60:

■ a. Add sections 10.3 and 12.2.5 in Method 4.

■ b. Revise section 16.4 in Method 4.

■ c. Revise sections 6.1.1.9 and 8.7.6.2.5 in Method 5.

■ d. Add sections 10.7 and 10.8 in Method 5.

■ e. Add sections 10.4 and 10.5 in Method 5H.

■ f. Add sections 10.1 and 10.2 in Method 5I.

The revisions and additions read as follows:

Appendix A–3 to Part 60-Test Methods 4 Through 5I

* * * * *

Method 4—Determination of Moisture Content in Stack Gases

* * * * *

10.3 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference-see 40 CFR 60.17) Class 6 (or better). Daily, before use, the field balance must measure the weight within ± 0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

* * * * *

12.2.5 Using F-factors to determine approximate moisture for estimating moisture content where no wet scrubber is being used, for the purpose of determining isokinetic sampling rate settings with no fuel sample, is acceptable using the average F_c or F_d factor from Method 19 (see Method 19, section 12.3.1). If this option is selected, calculate the approximate moisture as follows:

$B_{ws} = B_H + B_A + B_F$

Where:

B_A = Mole Fraction of moisture in the ambient air.

$$B_A = \frac{\%RH}{100 * P_{Bar}} * 10^{\left[6.6912-\left(\frac{3144}{T+390.86}\right)\right]}$$

B_F = Mole fraction of moisture from free water in the fuel.

$$B_F = \left[\frac{0.0036W^2 + 0.075W}{100}\right]\left[\frac{20.9 - O_2}{20.9}\right]$$

B_H = Mole fraction of moisture from the hydrogen in the fuel.

$$B_H = \left[1 - \frac{F_d}{F_w}\right]\frac{(20.9 - O_2)}{20.9}$$

B_{ws} = Mole fraction of moisture in the stack gas.

F_d = Volume of dry combustion components per unit of heat content at 0 percent oxygen, dscf/10^6.

Btu (scm/J). See Table 19–2 in Method 19.

F_w = Volume of wet combustion components per unit of heat content at 0 percent oxygen, wet.

scf/10^6 Btu (scm/J). See Table 19–2 in Method 19.

%RH = Percent relative humidity (calibrated hygrometer acceptable), percent.

P_{Bar} = Barometric pressure, in. Hg.

T = Ambient temperature, °F.

W = Percent free water by weight, percent.

O_2 = Percent oxygen in stack gas, dry basis, percent.

* * * * *

16.4 Using F-factors to determine moisture is an acceptable alternative to Method 4 for a combustion stack not using a scrubber, and where a fuel sample is taken during the test run and analyzed for development of an F_d factor (see Method 19, section 12.3.2), and where stack O_2 content is measured by Method 3A or 3B during each test run. If this option is selected, calculate the moisture content as follows:

$B_{ws} = B_H + B_A + B_F$

Where:

B_A = Mole fraction of moisture in the ambient air.

$$B_A = \frac{\%RH}{100\ P_{Bar}}[10^{[6.6912-\left(\frac{3144}{T+390.86}\right)]}]$$

Note: Values of B_A should be between 0.00 and 0.06 with common values being about 0.015.

B_F = Mole fraction of moisture from free water in the fuel.

$$B_F = \left[\frac{0.0036\ W^2 + 0.075\ W}{100}\right][\frac{20.9 - O_2}{20.9}]$$

Note: Free water in fuel is minimal for distillate oil and gases, such as propane and natural gas, so this step may be omitted for those fuels.

B_H = Mole fraction of moisture from the hydrogen in the fuel.

$$B_H = \left(1 - \frac{F_d}{F_w}\right)\frac{(20.9 - O_2)}{20.9}$$

B_{ws} = Mole fraction of moisture in the stack gas.

F_d = Volume of dry combustion components per unit of heat content at 0 percent oxygen, dscf/10^6 Btu (scm/J). Develop a test specific F_d value using an integrated fuel sample from each test run and Equation 19–13 in section 12.3.2 of Method 19.

F_w = Volume of wet combustion components per unit of heat content at 0 percent oxygen, wet scf/10^6 Btu (scm/J). Develop a test specific F_w value using an integrated fuel sample from each test run and Equation 19–14 in section 12.3.2 of Method 19.

%RH = Percent relative humidity (calibrated hygrometer acceptable), percent.

P_{Bar} = Barometric pressure, in. Hg.

T = Ambient temperature, °F.

W = Percent free water by weight, percent.

O_2 = Percent oxygen in stack gas, dry basis, percent.

* * * * *

Method 5—Determination of Particulate Matter Emissions From Stationary Sources

* * * * *

6.1.1.9 Metering System. Vacuum gauge, leak-free pump, calibrated temperature sensors, dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates.

* * * * *

8.7.6.2.5 Clean the inside of the front half of the filter holder by rubbing the surfaces with a Nylon bristle brush and rinsing with acetone. Rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. Carefully rinse out the glass cyclone, also (if applicable). After all acetone washings and particulate matter have been collected in the sample container, tighten the lid on the sample container so that acetone will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to allow determination of whether leakage occurred during transport. Label the container to clearly identify its contents.

* * * * *

10.7 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 6 (or better). Daily before use, the field balance must measure the weight within ±0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

10.8 Analytical Balance Calibration. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first use, and semiannually thereafter. The calibration of the analytical balance must be conducted using ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 2 (or better) tolerance weights. Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1g and 5g. If the scale cannot reproduce the value of the calibration weight to within 0.5 mg of the certified mass, perform corrective measures, and conduct the multipoint calibration before use.

* * * * *

Method 5H—Determination of Particulate Matter Emissions From Wood Heaters From a Stack Location

* * * * *

10.4 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 6 (or better). Daily before use, the field balance must measure the weight within ± 0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

10.5 Analytical Balance Calibration. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first use, and semiannually thereafter. The calibration of the analytical balance must be conducted using ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 2 (or better) tolerance weights. Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1g and 5g. If the scale cannot reproduce the value of the calibration weight to within 0.5 mg of the certified mass, perform corrective measures, and conduct the multipoint calibration before use.

* * * * *

Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources

* * * * *

10.1 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 6 (or better). Daily, before use, the field balance must measure the weight within ±0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

10.2 Analytical Balance Calibration. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first use, and semiannually thereafter. The calibration of the analytical balance must be conducted using ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 2 (or better) tolerance weights. Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1g and 5g. If the scale cannot reproduce the value of the calibration weight to within 0.5 mg of the certified mass, perform corrective measures and conduct the multipoint calibration before use.

* * * * *

■ 12. In appendix A–4 to part 60:
■ a. Revise section 8.3 in Method 6C.
■ b. Revise sections 8.1.2, 8.2.7, and 12.8 in Method 7E.
■ c. Revise sections 6.2.5 and 8.4.2 in Method 10.
■ d. Add section 6.2.6 in Method 10.
■ e. Revise sections 6.1.6, 6.1.7, 6.1.8, 6.1.9, 6.1.10, 8.1, 8.2.1 and 8.2.3 in Method 10A.
■ f. Add section 6.1.11 in Method 10A.
■ g. Revise section 6.1 in Method 10B.

The revisions and additions read as follows:

Appendix A–4 to Part 60—Test Methods 6 Through 10B

* * * * *

Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

8.3 Interference Check. You must follow the procedures of section 8.2.7 of Method 7E to conduct an interference check, substituting SO_2 for NO_X as the method pollutant. For dilution-type measurement systems, you must use the alternative interference check procedure in section 16 and a co-located, unmodified Method 6 sampling train.

* * * * *

Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

8.1.2 Determination of Stratification. Perform a stratification test at each test site to determine the appropriate number of sample traverse points. If testing for multiple pollutants or diluents at the same site, a stratification test using only one pollutant or diluent satisfies this requirement. A stratification test is not required for small stacks that are less than 4 inches in diameter. To test for stratification, use a probe of appropriate length to measure the NO_X (or pollutant of interest) concentration at 12 traverse points located according to Table 1–1 or Table 1–2 of Method 1. Alternatively, you may measure at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time (see section 8.2.6) at each traverse point. Calculate the individual point and mean NO_X concentrations. If the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: ±5.0 percent of the mean concentration; or ±0.5 ppm (whichever is less restrictive), the gas stream is considered unstratified, and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent or 0.5 ppm criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by not more than: ±10.0 percent of the mean concentration; or ±1.0 ppm (whichever is less restrictive), the gas stream is considered to be minimally stratified and you may take samples from three points. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Alternatively, if a 12-point stratification test was performed and the emissions were shown to be minimally stratified (all points within ± 10.0 percent of their mean or within ±1.0 ppm), and if the stack diameter (or equivalent diameter, for a rectangular stack or duct) is greater than 2.4 meters (7.8 ft), then you may use 3-point sampling and locate the three points along the measurement line exhibiting the highest average concentration during the stratification test at 0.4, 1.2 and 2.0 meters from the stack or duct wall. If the gas stream is found to be stratified because the 10.0 percent or 1.0 ppm criterion for a 3-point test is not met, locate 12 traverse points for the test in accordance with Table 1–1 or Table 1–2 of Method 1.

* * * * *

8.2.7 *Interference Check.* Conduct an interference response test of the gas analyzer prior to its initial use in the field. If you have multiple analyzers of the same make and model, you need only perform this alternative interference check on one analyzer. You may also meet the interference check requirement if the instrument manufacturer performs this or a similar check on an analyzer of the same make and model of the analyzer that you use and provides you with documented results.

(1) You may introduce the appropriate interference test gases (that are potentially encountered during a test; see examples in Table 7E–3) into the analyzer separately or as mixtures. Test the analyzer with the interference gas alone at the highest concentration expected at a test source and again with the interference gas and NO_X at a representative NO_X test concentration. For analyzers measuring NO_X greater than 20 ppm, use a calibration gas with a NO_X concentration of 80 to 100 ppm and set this concentration equal to the calibration span. For analyzers measuring less than 20 ppm NO_X, select an NO concentration for the calibration span that reflects the emission levels at the sources to be tested, and perform the interference check at that level. Measure the total interference response of the analyzer to these gases in ppmv. Record the responses and determine the interference using Table 7E–4. The specification in section 13.4 must be met.

(2) A copy of this data, including the date completed and signed certification, must be available for inspection at the test site and included with each test report. This interference test is valid for the life of the instrument unless major analytical components (*e.g.,* the detector) are replaced with different model parts. If major components are replaced with different model parts, the interference gas check must be repeated before returning the analyzer to service. If major components are replaced, the interference gas check must be repeated before returning the analyzer to service. The tester must ensure that any specific technology, equipment, or procedures that are intended to remove interference effects are operating properly during testing.

* * * * *

12.8 NO_2—NO Conversion Efficiency Correction. If desired, calculate the total NO_X concentration with a correction for converter efficiency using Equation 7E–8.

$$NO_{x\,Corr} = NO + \left(\frac{(NO_x - NO)}{Eff_{NO_2}} x\ 100\right) \qquad \text{Eq. 7E-8}$$

* * * * *

Method 10—Determination of Carbon Monoxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

6.2.5 Flexible Bag. Tedlar, or equivalent, with a capacity of 60 to 90 liters (2 to 3 ft^3). (Verify through the manufacturer that the Tedlar alternative is suitable for CO and make this verified information available for inspection.) Leak-test the bag in the laboratory before using by evacuating with a pump followed by a dry gas meter. When the evacuation is complete, there should be no flow through the meter.

6.2.6 Sample Tank. Stainless steel or aluminum tank equipped with a pressure indicator with a minimum volume of 4 liters.

* * * * *

8.4.2 Integrated Sampling. Evacuate the flexible bag or sample tank. Set up the equipment as shown in Figure 10–1 with the bag disconnected. Place the probe in the stack and purge the sampling line. Connect the bag, making sure that all connections are leak-free. Sample at a rate proportional to the stack velocity. If needed, the CO_2 content of the gas may be determined by using the Method 3 integrated sample procedures, or by weighing an ascarite CO_2 removal tube used and computing CO_2 concentration from the gas volume sampled and the weight gain of the tube. Data may be recorded on a form similar to Table 10–1. If a sample tank is used for sample collection, follow procedures similar to those in sections 8.1.2, 8.2.3, 8.3, and 12.4 of Method 25 as appropriate to prepare the tank, conduct the sampling, and correct the measured sample concentration.

* * * * *

Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries

* * * * *

6.1.6 Flexible Bag. Tedlar, or equivalent, with a capacity of 10 liters (0.35 ft^3) and equipped with a sealing quick-connect plug. The bag must be leak-free according to section 8.1. For protection, it is recommended that the bag be enclosed within a rigid container.

6.1.7 Sample Tank. Stainless steel or aluminum tank equipped with a pressure indicator with a minimum volume of 10 liters.

6.1.8 Valves. Stainless-steel needle valve to adjust flow rate, and stainless-steel 3-way valve, or equivalent.

6.1.9 CO_2 Analyzer. Fyrite, or equivalent, to measure CO_2 concentration to within 0.5 percent.

6.1.10 Volume Meter. Dry gas meter, capable of measuring the sample volume under calibration conditions of 300 ml/min (0.01 ft^3/min) for 10 minutes.

6.1.11 Pressure Gauge. A water filled U-tube manometer, or equivalent, of about 30 cm (12 in.) to leak-check the flexible bag.

* * * * *

8.1 Sample Bag or Tank Leak-Checks. While a leak-check is required after bag or sample tank use, it should also be done before the bag or sample tank is used for sample collection. The tank should be leak-checked according to the procedure specified in section 8.1.2 of Method 25. The bag should be leak-checked in the inflated and deflated condition according to the following procedure:

* * * * *

8.2.1 Evacuate and leak check the sample bag or tank as specified in section 8.1. Assemble the apparatus as shown in Figure 10A–1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter, and 3-way valve. Do not connect the bag or sample tank to the system at this time.

* * * * *

8.2.3 Purge the system with sample gas by inserting the probe into the stack and drawing the sample gas through the system at 300 ml/min ±10 percent for 5 minutes. Connect the evacuated bag or sample tank to the system, record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the bag is nearly full, or the sample tank reaches ambient pressure. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

* * * * *

Method 10B—Determination of Carbon Monoxide Emissions from Stationary Sources

* * * * *

6.1. Sample Collection. Same as in Method 10A, section 6.1 (paragraphs 6.1.1 through 6.1.11).

* * * * *

■ 13. Revise section 8.3.2 in Method 15 of appendix A–5 to part 60 to read as follows:

Appendix A–5 to Part 60-Test Methods 11 Through 15A

* * * * *

Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions From Stationary Sources

* * * * *

8.3.2 Determination of Calibration Drift. After each run, or after a series of runs made within a 24-hour period, perform a partial recalibration using the procedures in section 10.0. Only H_2S (or other permeant) need be used to recalibrate the GC/FPD analysis system and the dilution system. Partial recalibration may be performed at the midlevel calibration gas concentration or at a concentration measured in the samples but not less than the lowest calibration standard used in the initial calibration. Compare the calibration curves obtained after the runs to the calibration curves obtained under section 10.3. The calibration drift should not exceed the limits set forth in section 13.4. If the drift exceeds this limit, the intervening run or runs should be considered invalid. As an option, the calibration data set that gives the highest sample values may be chosen by the tester.

* * * * *

■ 14. In appendix A–6 to part 60:

■ a. Revise sections 12.1 and 12.2 in Method 16C.

■ b. Remove section 8.2.1.5.2.3 in Method 18.

The revisions read as follows:

Appendix A–6 to Part 60—Test Methods 16 Through 18

* * * * *

Method 16C—Determination of Total Reduced Sulfur Emissions From Stationary Sources

* * * * *

12.1 Nomenclature.

ACE = Analyzer calibration error, percent of calibration span.
CD = Calibration drift, percent.
C_{Dir} = Measured concentration of a calibration gas (low, mid, or high) when introduced in direct calibration mode, ppmv.
C_{H2S} = Concentration of the system performance check gas, ppmv H_2S.
C_S = Measured concentration of the system performance gas when introduced in system calibration mode, ppmv H_2S.
C_V = Manufacturer certified concentration of a calibration gas (low, mid, or high), ppmv SO_2.
C_{SO2} = Unadjusted sample SO_2 concentration, ppmv.
C_{TRS} = Total reduced sulfur concentration corrected for system performance, ppmv.
CS = Calibration span, ppmv.
DF = Dilution system (if used) dilution factor, dimensionless.
SP = System performance, percent.

12.2 Analyzer Calibration Error. For non-dilution systems, use Equation 16C–1 to calculate the analyzer calibration error for the low-, mid-, and high-level calibration gases.

$$ACE = \frac{C_{Dir} - C_v}{CS} X\ 100 \qquad \text{Eq. 16C-1}$$

* * * * *

■ 15. In appendix A–7 to part 60:

■ a. Revise sections 9.1, 12.1, and 12.3 in Method 25C.

■ b. Remove section 11.2 in Method 25C.

■ c. Add sections 12.4, 12.5, 12.5.1 and 12.5.2 in Method 25C.

The revisions and additions read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases

* * * * *

9.1 Miscellaneous Quality Control Measures.

Section	Quality control measure	Effect
8.4.2	Verify that landfill gas sample contains less than 20 percent N_2 or 5 percent O_2.	Ensures that ambient air was not drawn into the landfill gas sample and gas was sampled from an appropriate location.

Section	Quality control measure	Effect
10.1, 10.2	NMOC analyzer initial and daily performance checks	Ensures precision of analytical results.

* * * * *

12.1 Nomenclature

B_w = Moisture content in the sample, fraction.
C_{N2} = N_2 concentration in the diluted sample gas.
C_{mN2} = Measured N_2 concentration, fraction in landfill gas.
C_{mOx} = Measured Oxygen concentration, fraction in landfill gas.
C_{Ox} = Oxygen concentration in the diluted sample gas.
C_t = Calculated NMOC concentration, ppmv C equivalent.
C_{tm} = Measured NMOC concentration, ppmv C equivalent.
P_b = Barometric pressure, mm Hg.
P_t = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf} = Final gas sample tank pressure after pressurizing, mm Hg absolute.
P_{ti} = Gas sample tank pressure after evacuation, mm Hg absolute.
P_w = Vapor pressure of H_2O (from Table 25C–1), mm Hg.
r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 . . . r).
T_t = Sample tank temperature at completion of sampling, °K.
T_{ti} = Sample tank temperature before sampling, °K.
T_{tf} = Sample tank temperature after pressuring, °K.

* * * * *

12.3 Nitrogen Concentration in the landfill gas. Use equation 25C–2 to calculate the measured concentration of nitrogen in the original landfill gas.

$$C_{N2} = \left[\frac{\left(\frac{P_{tf}}{T_{tf}}\right)}{\left(\left(\frac{P_t}{T_t}\right)-\left(\frac{P_{ti}}{T_{ti}}\right)\right)}\right] C_{mN2} \qquad \text{Eq.25C-2}$$

12.4 Oxygen Concentration in the landfill gas. Use equation 25C–3 to calculate the measured concentration of oxygen in the original landfill gas.

$$C_{Ox} = \left[\frac{\left(\frac{P_{tf}}{T_{tf}}\right)}{\left(\left(\frac{P_t}{T_t}\right)-\left(\frac{P_{ti}}{T_{ti}}\right)\right)}\right] C_{mOx} \qquad \text{Eq.25C-3}$$

12.5 You must correct the NMOC Concentration for the concentration of nitrogen or oxygen based on which gas or gases passes the requirements in section 9.1.

12.5.1 NMOC Concentration with nitrogen correction. Use Equation 25C–4 to calculate the concentration of NMOC for each sample tank when the nitrogen concentration is less than 20 percent.

$$C_t = \frac{\frac{P_{tf}}{T_{tf}}}{\left(\frac{P_t}{T_t}-\frac{P_{ti}}{T_{ti}}\right)\left(1-\frac{99}{78}C_{N2}\right)-B_w}\frac{1}{r}\sum_{j=1}^{r} C_{tm(j)} \qquad \text{Eq.25C-4}$$

12.5.2 NMOC Concentration with oxygen correction. Use Equation 25C–5 to calculate the concentration of NMOC for each sample tank if the landfill gas oxygen is less than 5 percent and the landfill gas nitrogen concentration is greater than 20 percent.

$$C_t = \frac{\frac{P_{tf}}{T_{tf}}}{\left(\frac{P_t}{T_t}-\frac{P_{ti}}{T_{ti}}\right)\left(1-\frac{99}{21}C_{Ox}\right)-B_w}\frac{1}{r}\sum_{j=1}^{r} C_{tm(j)} \qquad \text{Eq.25C-5}$$

* * * * *

■ 16. In appendix A–8 to Part 60:

■ a. Revise section 13.3 in Method 26.

■ b. Revise sections 4.3 and 8.1.6 in Method 26A.

■ c. Revise section 8.2.9.3 in Method 29.

■ d. Add sections 10.4 and 10.5 in Method 29.

■ e. Revise the section heading for section 8.1 in Method 30A.

■ f. Revise the section heading for section 8.1, and revise 8.3.3.8 in Method 30B.

The revisions and additions read as follows:

Appendix A–8 to Part 60—Test Methods 26 Through 30B

* * * * *

Method 26—Determination of Hydrogen Chloride Emissions From Stationary Sources

* * * * *

13.3 Detection Limit. A typical IC instrumental detection limit for Cl^- is 0.2 μg/ml. Detection limits for the other analyses should be similar. Assuming 50 ml liquid recovered from both the acidified impingers, and the basic impingers, and 0.12 dscm (4.24 dscf) of stack gas sampled, then the analytical detection limit in the stack gas would be about 0.05 ppm for HCl and Cl_2, respectively.

* * * * *

Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Isokinetic Method

* * * * *

4.3 High concentrations of nitrogen oxides (NO_X) may produce sufficient nitrate (NO_3^-) to interfere with measurements of very low Br^- levels. Dissociating chloride salts (*e.g.*, ammonium chloride) at elevated temperatures interfere with halogen acid measurement in this method. Maintaining particulate probe/filter temperatures between 120 °C and 134 °C (248 °F and 273 °F) minimizes this interference.

* * * * *

8.1.6 Post-Test Moisture Removal (Optional). When the optional cyclone is included in the sampling train or when liquid is visible on the filter at the end of a sample run even in the absence of a cyclone, perform the following procedure. Upon completion of the test run, connect the ambient air conditioning tube at the probe inlet and operate the train with the filter heating system between 120 and 134 °C (248 and 273 °F) at a low flow rate (*e.g.*, $\Delta H = 1$ in. H_2O) to vaporize any liquid and hydrogen halides in the cyclone or on the filter and pull them through the train into the impingers. After 30 minutes, turn off the flow, remove the conditioning tube, and examine the cyclone and filter for any visible liquid. If liquid is visible, repeat this step for 15 minutes and observe again. Keep repeating until the cyclone is dry.

Note: It is critical that this procedure is repeated until the cyclone is completely dry.

* * * * *

Method 29—Determination of Metals Emissions From Stationary Sources

* * * * *

8.2.9.3 Wash the two permanganate impingers with 25 ml of 8 N HCl, and place the wash in a separate sample container labeled No. 5C containing 200 ml of water. First, place 200 ml of water in the container. Then wash the impinger walls and stem with the 8 N HCl by turning the impinger on its side and rotating it so that the HCl contacts all inside surfaces. Use a total of only 25 ml of 8 N HCl for rinsing *both permanganate impingers combined.* Rinse the first impinger, then pour the actual rinse used for the first impinger into the second impinger for its rinse. Finally, pour the 25 ml of 8 N HCl rinse carefully into the container with the 200 ml of water. Mark the height of the fluid level on the outside of the container in order to determine if leakage occurs during transport.

* * * * *

10.4 Field Balance Calibration Check. Check the calibration of the balance used to weigh impingers with a weight that is at least 500g or within 50g of a loaded impinger. The weight must be ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference-see 40 CFR 60.17) Class 6 (or better). Daily before use, the field balance must measure the weight within ±0.5g of the certified mass. If the daily balance calibration check fails, perform corrective measures and repeat the check before using balance.

10.5 Analytical Balance Calibration. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first use, and semiannually thereafter. The calibration of the analytical balance must be conducted using ASTM E617–13 "Standard Specification for Laboratory Weights and Precision Mass Standards" (incorporated by reference—see 40 CFR 60.17) Class 2 (or better) tolerance weights. Audit the balance each day it is used for gravimetric measurements by weighing at least one ASTM E617–13 Class 2 tolerance (or better) calibration weight that corresponds to 50 to 150 percent of the weight of one filter or between 1g and 5g. If the scale cannot reproduce the value of the calibration weight to within 0.5 mg of the certified mass, perform corrective measures, and conduct the multipoint calibration before use.

* * * * *

Method 30A—Determination of Total Vapor Phase Mercury Emissions From Stationary Sources (Instrumental Analyzer Procedure)

* * * * *

8.1 Selection of Sampling Sites and Sampling Points * * *

* * * * *

Method 30B—Determination of Total Vapor Phase Mercury Emissions From Coal-Fired Combustion Sources Using Carbon Sorbent Traps

* * * * *

8.1 Selection of Sampling Sites and Sampling Points * * *

* * * * *

8.3.3.8 Sample Handling, Preservation, Storage, and Transport. While the performance criteria of this approach provides for verification of appropriate sample handling, it is still important that the user consider, determine and plan for suitable sample preservation, storage, transport, and holding times for these measurements. Therefore, procedures in ASTM D6911–15 "Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis" (incorporated by reference-see 40 CFR 60.17) shall be followed for all samples, where appropriate. To avoid Hg contamination of the samples, special attention should be paid to cleanliness during transport, field handling, sampling, recovery, and laboratory analysis, as well as during preparation of the sorbent cartridges. Collection and analysis of blank samples (*e.g.*, reagent, sorbent, field, etc.) is useful in verifying the absence or source of contaminant Hg.

* * * * *

■ 17. In appendix B to part 60:

■ a. Add the entry "Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources" at the end of the table of contents for appendix B to part 60.

■ b. Add a sentence to the end of section 8.1(2)(i) in Performance Specification 1.

■ c. Revise sections 3.11, 6.1.1, 6.1.2, 16.3.2, and section 18.0 in Performance Specification 2.

■ d. Revise section 13.2 in Performance Specification 3.

■ e. Revise sections 8.3, 8.3.1, and 13.3 in Performance Specification 4A.

■ f. Revise sections 12.1 and 13.1 in Performance Specification 11.

■ g. Revise section 9.1.2 in Performance Specification 15.

■ h. Add reserved sections 14.0 and 15.0 in Performance Specification 15.

■ i. Revise the introductory text of section 12.2.3 in Performance Specification 16.

■ j. Revise table 16–1 in Performance Specification 16.

The revisions and additions read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 1—Specifications and Test Procedures for Continuous Opacity Monitoring Systems in Stationary Sources

* * * * *

8.1 * * *

(2) * * *

(i) * * * Alternatively, you may select a measurement location specified in paragraph 8.1(2)(ii) or 8.1(2)(iii).

* * * * *

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

3.11 *Span Value* means the calibration portion of the measurement range as specified in the applicable regulation or other requirement. If the span is not specified in the applicable regulation or other requirement, then it must be a value approximately equivalent to two times the emission standard. For spans less than 500 ppm, the span value may either be rounded upward to the next highest multiple of 10 ppm, or to the next highest multiple of 100 ppm such that the equivalent emission concentration is not less than 30 percent of the selected span value.

* * * * *

6.1.1 Data Recorder. The portion of the CEMS that provides a record of analyzer output. The data recorder may record other pertinent data such as effluent flow rates, various instrument temperatures or abnormal CEMS operation. The data recorder output range must include the full range of expected concentration values in the gas stream to be sampled including zero and span values.

6.1.2 The CEMS design should also allow the determination of calibration drift at the zero and span values. If this is not possible or practical, the design must allow these determinations to be conducted at a low-level value (zero to 20 percent of the span value) and at a value between 50 and 100 percent of the span value. In special cases, the Administrator may approve a single-point calibration drift determination.

* * * * *

16.3.2 For diluent CEMS:

RA≡d; ≤0.7 percent O_2 or CO_2, as applicable.

Note: Waiver of the relative accuracy test in favor of the alternative RA procedure does not preclude the requirements to complete the CD tests nor any other requirements specified in an applicable subpart for reporting CEMS data and performing CEMS drift checks or audits.

* * * * *

18.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 2–1—t-VALUES

n [a]	$t_{0.975}$	n [a]	$t_{0.975}$	n [a]	$t_{0.975}$
2	12.706	7	2.447	12	2.201
3	4.303	8	2.365	13	2.179
4	3.182	9	2.306	14	2.160
5	2.776	10	2.262	15	2.145
6	2.571	11	2.228	16	2.131

[a] The values in this table are already corrected for n − 1 degrees of freedom. Use n equal to the number of individual values.

TABLE 2–2—MEASUREMENT RANGE

Measurement point	Pollutant monitor	Diluent monitor for	
		CO_2	O_2
1	20–30% of span value	5–8% by volume	4–6% by volume.
2	50–60% of span value	10–14% by volume	8–12% by volume.

BILLING CODE 6560–50–P

Figure 2-1. Calibration Drift Determination

	Day	Date and time	Calibration value (C)	Monitor value (M)	Difference (C-M)	Percent of span value (C-M)/span value × 100
Low-level						
High-level						

FIGURE 2-2. RELATIVE ACCURACY DETERMINATION.

Run No.	Date and time	SO_2			NO_x[b]			CO_2 or O_2[a]		SO_2[a]			NO_x[a]		
		RM	CEMS	Diff	RM	CEMS	Diff	RM	CEMS	RM	CEMS	Diff	RM	CEMS	Diff
		ppm[c]			ppm[c]			%[c]	%[c]	mass/GCV			mass/GCV		
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12															
Average															
Confidence Interval															
Accuracy															

[a] For Steam generators.
[b] Average of three samples.
[c] Make sure that RM and CEMS data are on a consistent basis, either wet or dry.

BILLING CODE 6560–50–C

* * * * *

Performance Specification 3—Specifications and Test Procedures for O_2 and CO_2 Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

13.2 CEMS Relative Accuracy Performance Specification. The RA of the CEMS must be no greater than 20.0 percent of the mean value of the reference method (RM) data when calculated using equation 3–1. The results are also acceptable if the result of Equation 3–2 is less than or equal to 1.0 percent O_2 (or CO_2).

$$RA = \frac{\left[\left|\overline{d}\right| + \left|CC\right|\right]}{\overline{RM}} \times 100 \qquad \text{Eq. 3-1}$$

Where:

$\left|\overline{d}\right|$ = Absolute value of the mean of the differences (from Equation 2-3 of Performance Specification 2).

$|CC|$ = Absolute value of the confidence coefficient (from Equation 2-5 of Performance Specification 2).

$\overline{RM}$ = Average Reference Method value.

$$RA = \overline{RM} - \overline{CEMS} \qquad \text{Eq. 3-2}$$

$\overline{RM}$ = Average Reference Method value.

$\overline{CEMS}$ = Average CEMS value.

* * * * *

Performance Specification 4A—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.3 Response Time Test Procedure. The response time test applies to all types of CEMS, but will generally have significance only for extractive systems. The entire system is checked with this procedure including applicable sample extraction and transport, sample conditioning, gas analyses, and data recording.

8.3.1 Introduce zero gas into the system. When the system output has stabilized (no change greater than 1 percent of full scale for 30 sec), introduce an upscale calibration gas and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value. Next, reintroduce the zero gas and wait for a stable reading before recording the response time (downscale response time). Repeat the entire procedure until you have three sets of data to determine the mean upscale and downscale response times. The slower or longer of the two means is the system response time.

* * * * *

13.3 Response Time. The CEMS response time shall not exceed 240 seconds to achieve 95 percent of the final stable value.

* * * * *

Performance Specification 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

12.1 How do I calculate upscale drift and zero drift? You must determine the difference in your PM CEMS output readings from the established reference values (zero and upscale check values) after a stated period of operation during which you performed no unscheduled maintenance, repair or adjustment.

(1) Calculate the upscale drift (UD) using Equation 11–1:

$$UD = \frac{|R_{CEM} - R_U|}{R_r} \times 100 \qquad \text{Eq. 11-1}$$

Where:

UD = The upscale (high-level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response to the upscale reference standard,

R_U = The pre-established numerical value of the upscale reference standard, and

R_r = The response range of the analyzer.

(2) Calculate the zero drift (ZD) using Equation 11–2:

$$ZD = \frac{|R_{CEM} - R_L|}{R_r} \times 100 \qquad \text{Eq. 11-2}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS in percent,
R_{CEM} = The measured PM CEMS response to the zero reference standard,
R_L = The pre-established numerical value of the zero reference standard, and
R_r = The response range of the analyzer.

(3) Summarize the results on a data sheet similar to that shown in Table 2 (see section 17).

* * * * *

13.1 What is the 7-day drift check performance specification? Your daily PM CEMS internal drift checks must demonstrate that the average daily drift of your PM CEMS does not deviate from the value of the reference light, optical filter, Beta attenuation signal, or other technology-suitable reference standard by more than 2 percent of the response range. If your CEMS includes diluent and/or auxiliary monitors (for temperature, pressure, and/or moisture) that are employed as a necessary part of this performance specification, you must determine the calibration drift separately for each ancillary monitor in terms of its respective output (see the appropriate performance specification for the diluent CEMS specification). None of the calibration drifts may exceed their individual specification.

* * * * *

Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources

* * * * *

9.1.2 Test Procedure. Spike the audit sample using the analyte spike procedure in section 11. The audit sample is measured directly by the FTIR system (undiluted) and then spiked into the effluent at a known dilution ratio. Measure a series of spiked and unspiked samples using the same procedures as those used to analyze the stack gas. Analyze the results using sections 12.1 and 12.2. The measured concentration of each analyte must be within ±5 percent of the expected concentration (plus the uncertainty), *i.e.*, the calculated correction factor must be within 0.93 and 1.07 for an audit with an analyte uncertainty of ±2 percent.

* * * * *

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

* * * * *

Performance Specification 16—Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources

* * * * *

12.0 Calculations and Data Analysis

* * * * *

12.2.3 Confidence Coefficient. Calculate the confidence coefficient using Equation 16–3 and Table 16–1 for n − 1 degrees of freedom.

* * * * *

17.0 Tables, Diagrams, Flowcharts, and Validation Data

TABLE 16–1—t-VALUES FOR ONE-SIDED, 97.5 PERCENT CONFIDENCE INTERVALS FOR SELECTED SAMPLE SIZES *

n − 1 *	t-value	n − 1	t-value
1	12.706	15	2.131
2	4.303	16	2.120
3	3.182	17	2.110
4	2.776	18	2.101
5	2.571	19	2.093
6	2.447	20	2.086
7	2.365	21	2.080
8	2.306	22	2.074
9	2.262	23	2.069
10	2.228	24	2.064
11	2.201	25	2.060
12	2.179	26	2.056
13	2.160	27	2.052
14	2.145	>28	t-Table

* The value n is the number of RM runs; n − 1 equals the degrees of freedom.

* * * * *

■ 18. Revise section 12.0 paragraphs (3) and (4) in Procedure 2 of appendix F to part 60 to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

Procedure 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

* * * * *

12.0 What calculations and data analysis must I perform for my PM CEMS?

* * * * *

(3) How do I calculate daily upscale and zero drift? You must calculate the upscale drift using Equation 2–2 and the zero drift using Equation 2–3:

$$UD = \frac{|R_{CEM} - R_U|}{R_r} \times 100 \qquad \text{Eq. 2-2}$$

Where:

UD = The upscale drift of your PM CEMS, in percent,
R_{CEM} = Your PM CEMS response to the upscale check value,
R_U = The upscale check value, and
R_r = The response range of the analyzer.

$$ZD = \frac{|R_{CEM} - R_L|}{R_r} \times 100 \qquad \text{Eq. 2-3}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response of the zero check value,

R_L = The zero check value, and

R_r = The response range of the analyzer.

(4) How do I calculate SVA accuracy? You must use Equation 2–4 to calculate the accuracy, in percent, for each of the three SVA tests or the daily sample volume check:

$$\text{SVA Accuracy} = \frac{|V_M - V_R|}{V_R} \times 100 \qquad \text{Eq. 2-4}$$

Where:

SVA Accuracy = The SVA accuracy at each audit point, in percent,

V_M = Sample gas volume determined/reported by your PM CEMS (*e.g.*, dscm), and

V_R = Sample gas volume measured by the independent calibrated reference device (*e.g.*, dscm) for the SVA or the reference value for the daily sample volume check.

Note: Before calculating SVA accuracy, you must correct the sample gas volumes measured by your PM CEMS and the independent calibrated reference device to the same basis of temperature, pressure, and moisture content. You must document all data and calculations.

* * * * *

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

■ 19. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 20. In § 61.13, revise paragraph (e)(1)(i) to read as follows:

§ 61.13 Emission tests and waiver of emission tests.

* * * * *

(e) * * *

(1) * * *

(i) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60 of this chapter; Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60; Method 18 and 19 of appendix A–6 of part 60; Methods 20, 22, and 25A of appendix A–7 of part 60; Methods 30A and 30B of appendix A–8 of part 60; and Methods 303, 318, 320, and 321 of appendix A of part 63 of this chapter. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. "Commercially available" means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and then report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

■ 21. Revise the section heading for section 11.7.3 in Method 107 of appendix B to part 61 to read as follows:

Appendix B to Part 61—Test Methods

* * * * *

Method 107—Determination of Vinyl Chloride Content of In-Process Wastewater Samples, and Vinyl Chloride Content of Polyvinyl Chloride Resin Slurry, Wet Cake, and Latex Samples

* * * * *

11.0 Analytical Procedure

* * * * *

11.7.3 Dispersion Resin Slurry and Latex Samples. * * *

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 22. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 23. In § 63.7:

■ a. Revise paragraph (c)(2)(iii)(A).

■ b. Add paragraph (g)(2).

The revision and addition read as follows:

§ 63.7 Performance testing requirements.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) The source owner, operator, or representative of the tested facility shall obtain an audit sample, if commercially available, from an AASP for each test method used for regulatory compliance purposes. No audit samples are required for the following test methods: Methods 3A and 3C of appendix A–3 of part 60 of this chapter; Methods 6C, 7E, 9, and 10 of appendix A–4 of part 60; Methods 18 and 19 of appendix A–6 of part 60; Methods 20, 22, and 25A of appendix A–7 of part 60; Methods 30A and 30B of appendix A–8 of part 60; and Methods 303, 318, 320, and 321 of appendix A of this part. If multiple sources at a single facility are tested during a compliance test event, only one audit sample is required for each method used during a compliance test. The compliance authority responsible for the compliance test may waive the requirement to include an audit sample if they believe that an audit sample is not necessary. "Commercially available" means that two or more independent AASPs have blind audit samples available for purchase. If the source owner, operator, or representative cannot find an audit sample for a specific method, the owner, operator, or representative shall consult the EPA Web site at the following URL, *www.epa.gov/ttn/emc,* to confirm whether there is a source that can supply an audit sample for that method. If the EPA Web site does not list an available audit sample at least 60 days prior to the beginning of the compliance test, the source owner, operator, or representative shall not be required to include an audit sample as part of the quality assurance program for the compliance test. When ordering an audit sample, the source owner, operator, or representative shall give the sample provider an estimate for the concentration of each pollutant that is emitted by the source or the estimated concentration of each pollutant based on the permitted level and the name, address, and phone number of the compliance authority. The source owner, operator, or representative shall report the results for the audit sample along with a summary of the emission test results for the audited pollutant to the compliance authority and shall report the results of the audit sample to the AASP. The source owner, operator, or representative shall make both reports at the same time and in the same manner or shall report to the compliance authority first and then report to the AASP. If the method being audited is a method that allows the samples to be analyzed in the field and the tester plans to analyze the samples in the field, the tester may analyze the audit samples prior to collecting the emission samples provided a representative of the compliance authority is present at the testing site. The tester may request, and the compliance authority may grant, a waiver to the requirement that a representative of the compliance authority must be present at the testing site during the field analysis of an audit sample. The source owner, operator, or representative may report the results of the audit sample to the compliance authority and then report the results of the audit sample to the AASP prior to collecting any emission samples. The test protocol and final test report shall document whether an audit sample was ordered and utilized and the pass/fail results as applicable.

* * * * *

(g) * * *

(2) Contents of report (electronic or paper submitted copy). Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, the report for a performance test shall include the elements identified in paragraphs (g)(2)(i) through (vi) of this section.

(i) General identification information for the facility including a mailing address, the physical address, the owner or operator or responsible official (where applicable) and his/her email address, and the appropriate Federal Registry System (FRS) number for the facility.

(ii) Purpose of the test including the applicable regulation requiring the test, the pollutant(s) and other parameters being measured, the applicable emission standard, and any process parameter component, and a brief process description.

(iii) Description of the emission unit tested including fuel burned, control devices, and vent characteristics; the appropriate source classification code (SCC); the permitted maximum process rate (where applicable); and the sampling location.

(iv) Description of sampling and analysis procedures used and any modifications to standard procedures, quality assurance procedures and results, record of process operating conditions that demonstrate the applicable test conditions are met, and values for any operating parameters for which limits were being set during the test.

(v) Where a test method requires you record or report, the following shall be included in your report: Record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, chain-of-custody documentation, and example calculations for reported results.

(vi) Identification of the company conducting the performance test including the primary office address, telephone number, and the contact for this test including his/her email address.

* * * * *

■ 24. Revise sections 13.1, 13.4, and 13.4.1 in Method 320 of appendix A to part 63 to read as follows:

Appendix A to Part 63—Test Methods Pollutant Measurement Methods From Various Waste Media

* * * * *

Method 320—Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy

* * * * *

13.0 Method Validation Procedure

* * * * *

13.1 Section 6.0 of Method 301 (40 CFR part 63, appendix A), the Analyte Spike procedure, is used with these modifications. The statistical analysis of the results follows section 12.0 of EPA Method 301. Section 3 of this method defines terms that are not defined in Method 301.

* * * * *

13.4 *Statistical Treatment.* The statistical procedure of EPA Method 301 of this appendix, section 12.0 is used to evaluate the bias and precision. For FTIR testing a validation "run" is defined as spectra of 24 independent samples, 12 of which are spiked with the analyte(s) and 12 of which are not spiked.

13.4.1 *Bias.* Determine the bias (defined by EPA Method 301 of this appendix, section 12.1.1) using equation 7:

$$B = S_m - CS$$

Where:

B = Bias at spike level.

S_m = Mean concentration of the analyte spiked samples.

CS = Expected concentration of the spiked samples.

* * * * *

[FR Doc. 2016–19642 Filed 8–29–16; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 81, No. 168

Tuesday, August 30, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

50283–50604	1
50605–51074	2
51075–51296	3
51297–51772	4
51773–52320	5
52321–52588	8
52589–52740	9
52741–52968	10
52969–53244	11
53245–53906	12
56907–54476	15
54477–54708	16
54709–55104	17
55105–55350	18
55351–56470	19
56471–57438	22
57439–57742	23
57743–58380	24
58380–58806	25
58807–59120	26
59121–59420	29
59421–59826	30

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:	
9473	52965
9474	57743
9475	58805
9476	59121
9477	59421
Executive Orders:	
13246 (revoked by EO 13735)	54709
13247 (revoked by EO 13736)	54711
13261 Section 4(g) (revoked by EO 13736)	54711
13614 (revoked by EO 13737)	54713
13673 (amended by 13738)	58807
13675 (amended by 13734)	52321
13734	52321
13735	54709
13736	54711
13737	54713
13738	58807
Administrative Orders:	
Notices:	
Notice of August 4, 2016	52587
Memorandums:	
Memorandum of March 19, 2002 (revoked by EO 13735 and 13736)	54711
Memorandum of February 12, 2003 (revoked by EO 13736)	54711
Memorandum of July 26, 2016	51773
Memorandum of August 1, 2016	55105
Memorandum of August 3, 2016	52323
Memorandum of August 5, 2016	52967
Memorandum of August 5, 2016	55109
Memorandum of August 12, 2016 (Office of Personnel Management)	54715
Memorandum of August 12, 2016 (National Endowment for the Humanities)	54717
Presidential Determinations:	
No. 2016–09 of August 4, 2016	55107

5 CFR

532	57745
630	51775
890	58381
894	58381
Proposed Rules:	
532	57809
890	59518

6 CFR

Proposed Rules:	
5	52593

7 CFR

37	52589
51	51297
59	52969
205	51075
400	53658
457	52590
761	51274
762	51274
763	51274
764	51274
765	51274
766	51274
767	51274
770	51274
772	51274
773	51274
774	51274
799	51274
981	54719
986	51298
996	50283
1150	53245
1205	51781
1217	59425
1436	51274
1940	51274
3430	58809
3560	57439
4279	54477
4287	54477
Proposed Rules:	
205	59521
319	51381, 53334, 58867, 58870, 58873, 59522
906	54748
922	57493
929	51383
948	50406
983	54520
1260	57495

8 CFR

274a	57442

9 CFR

56	53247
77	52325
101	59427

103..........59427
112..........59427
113..........59427
114..........59427
145..........53247
146..........53247
147..........53247

Proposed Rules:

1..........51386
2..........51386
3..........51386

10 CFR

20..........52974
72..........57442
429..........55111, 59386
430..........54721, 55111, 56471, 57745, 59386
431..........53907, 57745
590..........59436

Proposed Rules:

72..........57497
429..........51812, 53961, 54926, 58164, 59736
430..........52196, 53962, 55155, 57374, 58164, 59736
431..........51812, 53961, 54926, 59736
820..........53337
951..........51140

12 CFR

45..........50605
237..........50605
334..........58382
349..........50605
624..........50605
1221..........50605
1402..........59437
1806..........52741

Proposed Rules:

3..........55381
34..........51394
47..........55381
50..........55381
213..........51400
226..........51394, 51404
1013..........51400
1026..........51394, 51404, 54318
1070..........58310
1091..........58310
1272..........57499

13 CFR

126..........51312

Proposed Rules:

115..........52595
120..........52595

14 CFR

11..........59129
13..........51079
25..........51081, 51084, 51086, 51090, 51093, 51095, 55351, 56472, 56474, 56475, 57758
39..........51097, 51314, 51317, 51320, 51323, 51325, 51328, 51330, 52750, 52752, 52755, 52758, 52975, 53252, 53255, 54908, 55353, 55358, 55362, 55366, 57447, 57449, 58811, 58813, 58816, 58818, 58821, 58823, 58827, 58829
71..........50613, 52761, 52762, 52991, 52992, 53262, 53263, 53264, 53265, 53912, 53913, 53915, 55371, 58382, 58383
91..........50615
95..........57761
97..........51332, 51334, 51337, 51339, 58384, 58387, 58390, 58392
383..........52763
406..........51079
415..........59438
417..........59438
431..........59440
440..........54721, 55115

Proposed Rules:

23..........57810
39..........51142, 51813, 51815, 51818, 51821, 54750, 56538, 56540, 58874, 59526, 59528, 59530, 59532, 59535, 59539, 59541, 59544, 59546, 59548, 59549
71..........52369, 53091, 53093, 53342, 53962, 53964, 54752, 58413, 58414, 58416, 58417

15 CFR

744..........55372, 57451
758..........54721
774..........52326
902..........54390

Proposed Rules:

740..........57505

16 CFR

Proposed Rules:

Ch. II..........51824
259..........52780
1308..........54754

17 CFR

1..........53266, 54478
3..........54478
23..........54478
37..........54478
43..........54478
45..........54478
46..........54478
170..........54478
242..........53546

Proposed Rules:

3..........51824, 53343
4..........51828
165..........59551
210..........51608
229..........51608, 58877
230..........51608
239..........51608, 58877
240..........51608
249..........51608, 58877
274..........51608

18 CFR

35..........50290
154..........51100
1312..........54498

Proposed Rules:

35..........51726

19 CFR

10..........58831
12..........53916, 57456
128..........58831
143..........58831
145..........58831
163..........57456
165..........56477
351..........50617

Proposed Rules:

12..........54763, 59157
127..........59157
351..........58419

20 CFR

404..........51100
603..........56072
615..........57764
620..........50298
651..........56072
652..........56072
653..........56072
654..........56072
658..........56072
675..........56072
676..........55792
677..........55792
678..........55792
679..........56072
680..........56072
681..........56072
682..........56072
683..........56072
684..........56072
685..........56072
686..........56072
687..........56072
688..........56072

Proposed Rules:

404..........51412, 54520
416..........54520
702..........58878

21 CFR

1..........57784, 59129
11..........50303, 54499, 57784
16..........52994, 57784
20..........54960
25..........54960
100..........59129
101..........50303, 54499, 54501, 59129
104..........59129
106..........57784
110..........57784
111..........57784
112..........57784
114..........57784
117..........57784
120..........57784
123..........57784
129..........57784
170..........54960
179..........57784
184..........54960
186..........54960
211..........57784
507..........57784
510..........59131
514..........52995
520..........59131
522..........59131
524..........59131
558..........57796, 59131, 59135
570..........54960
610..........52329
1105..........52329
1301..........53846, 58834
1305..........58834
1308..........58834

Proposed Rules:

16..........57812, 58342
58..........58342
117..........57816, 58421
175..........52370
176..........52370
177..........52370
178..........52370
Ch. II..........53688, 53767
507..........58421
511..........57812
558..........57818
1105..........52371

22 CFR

120..........54732
123..........54732
124..........54732
125..........54732
126..........54732
239..........50618
1306..........59440

23 CFR

635..........57716
710..........57716
810..........57716

24 CFR

291..........52998

Proposed Rules:

30..........53095
206..........53095
Ch. IX..........57506

25 CFR

Proposed Rules:

30..........54768
515..........58890

26 CFR

1..........54721, 55133, 57458, 57459
300..........52766
301..........51795, 55133
602..........55133

Proposed Rules:

1..........50657, 50671, 51413
25..........51413
300..........56543
301..........50657, 50671, 51835

27 CFR

9..........56490, 56492
19..........59445
20..........59445
21..........59445
27..........59445
28..........59445

28 CFR

35..........53204
36..........53204

Proposed Rules:

0..........53965
31..........52377
32..........57348
44..........53965

29 CFR

1926..........53268
4022..........53921
2510..........59464

Proposed Rules:

70..........54770
2510..........59581

30 CFR

1241..........50306

Proposed Rules:

56 58422
57 ..... 58422, 58424
70 58424
72 58424
75 58424
250 53348

31 CFR

Proposed Rules:

1010 58425
1020 58425

32 CFR

232 58840
237a 53922
505 52767
706 54737
1911 52591

33 CFR

97 59136
100 ..... 50319, 50621, 53269, 54739, 55374, 58394, 59477
101 57652
103 57652
104 57652
105 57652
106 652
117 ..... 50320, 50621, 52335, 52769, 53270, 53271, 54741, 56504, 56505, 57800, 57801, 58395, 58846, 59137
160 59136
165 ..... 50622, 51798, 51801, 52335, 52339, 52769, 53004, 53922, 55146, 55374, 56506, 57459, 57801, 58395, 58846, 59479, 59480, 59482, 59484

Proposed Rules:

110 54531
165 ..... 57507, 59163
334 52781

34 CFR

36 50321
Ch. II 52341
Ch. III 50324, 53271
361 ..... 55630, 55792
363 55630
367 55562
369 55562
370 55562
371 55562
373 55562
376 55562
377 55562
379 55562
381 55562
385 55562
386 55562
387 55562
388 55562
389 55562
390 55562
396 55562
397 55630
461 55526
462 55526
463 ..... 55526, 55792
472 55630
477 55630
489 55630
490 55630

36 CFR

242 52528

Proposed Rules:

7 56550

37 CFR

Proposed Rules:

370 52782

38 CFR

21 52770
36 59137

Proposed Rules:

4 53353
17 51836

39 CFR

230 50624

Proposed Rules:

3001 51145
3050 ..... 59592, 59593

40 CFR

50 ..... 53006, 58010
51 ..... 50330, 58010, 59800
52 ..... 50336, 50339, 50342, 50348, 50351, 50353, 50358, 50360, 50362, 50626, 50628, 51341, 53008, 53280, 53284, 53290, 53294, 53297, 53300, 53308, 53309, 53924, 53926, 53929, 54502, 54504, 54506, 54742, 56508, 56512, 57461, 57463, 57466, 57469, 58397, 58400, 58402, 58849, 58855, 59139, 59486, 59488, 59490
56 51102
60 ..... 52346, 52778, 59332, 59800
61 59800
62 58405
63 ..... 51114, 52346, 52348, 59800
87 54422
93 58010
97 50630
180 ..... 50630, 52348, 53012, 53019, 53931, 54510, 58407, 59499
257 51802
271 ..... 53025, 59503
300 53311
1068 54422

Proposed Rules:

50 53097
51 50408
52 ..... 50409, 50415, 50416, 50426, 50427, 50428, 50430, 52388, 53098, 53362, 53365, 53370, 53378, 53978, 54532, 54780, 55156, 55402, 56555, 56556, 57509, 57519, 57522, 57531, 57534, 57535, 57544, 58434, 58435, 58438, 58894, 59165, 58593
62 58442
63 51145
70 57822
122 50434
152 51425
162 51425
166 51425
180 ..... 53379, 59165
257 51838
271 ..... 53100, 59594
300 53380
721 57846
745 52393

41 CFR

74 55148

Proposed Rules:

Appendix C to Ch. 301 53979
304 53979
305 53979
306 53979

42 CFR

405 ..... 51116, 56762
412 ..... 52056, 56762
413 ..... 51970, 56762
418 52144
424 ..... 51116, 51120
455 ..... 51116, 51120
489 56762

Proposed Rules:

10 53381
70 54230
71 54230
88 55086
402 57554
405 52783
410 52783
411 52783
413 51147
414 ..... 51147, 52783
417 52783
420 57554
422 52783
423 ..... 52783, 54666
424 52783
425 52783
447 53980
455 57554
460 ..... 52783, 54666
494 51147
510 50794
512 50794

43 CFR

10 52352

44 CFR

10 56514
60 56514
64 ..... 51808, 52353, 55149, 55150
78 56514
79 56514
80 56514
206 56514
209 56514

Proposed Rules:

9 ..... 56558, 57402

45 CFR

144 53031
147 53031
153 53031
154 53031
155 53031
156 53031
158 53031
Ch. IX 53033

46 CFR

502 59141
503 59141
515 59141
520 59141
530 59141
531 59141
535 59141
540 59141
550 59141
555 59141
560 59141

Proposed Rules:

28 53986
501 53986
530 56559
531 56559
535 53986

47 CFR

0 55316
1 ..... 52354, 59146
4 52354
73 58858
11 53039
25 55316
79 ..... 55152, 57473

Proposed Rules:

2 58270
4 55161
9 55161
20 55161
25 58270
30 58270
54 ..... 54018, 55166
64 57851
97 53388
101 58270

48 CFR

Ch. 1 ..... 58562, 58652
Ch. 2 59515
1 58562
4 58562
9 58562
17 58562
22 ..... 58562, 58654
42 58562
52 ..... 58562, 58654
202 50635
212 50635
213 53045
218 53045
225 ..... 50650, 59510
231 59510
242 50635
245 50652
246 50635
252 ..... 50635, 50650, 50652
301 58859
303 58859
333 58859
609 51125
649 51125
1816 50365
1852 50365

Proposed Rules:

202 53101
212 ..... 50652, 53101
215 ..... 53101, 59594
219 59594
234 53101
235 59594
239 53101
246 50680
252 ..... 50680, 53101
Ch. 7 55405
701 55405
722 55405
752 56572
1801 54783
1815 54783
1852 54783

49 CFR

40...52364
173...53935
179...53935
192...54512
195...54512
270...53850
665...50367
670...53046
1002...50652
1040...51343

Proposed Rules:

269...56574
391...52608
1109...51147
1144...51149
1145...51149
1247...52784
1248...52784

50 CFR

17...51348, 51550, 53315, 55058, 55266, 59045
18...52276
20...54514
32...52248, 55153
36...52248
100...52528
216...51126, 54390
219...53061
224...50394
300...50401, 51126, 58410
600...51126
622...51138, 52366, 58411, 59517
635...51810, 55376, 57803, 59153
648...51370, 51374, 52366, 53958, 54518, 54519, 54744, 56534, 56535, 56536, 58859
660...51126, 57489
679...50404, 50405, 51379, 51380, 52367, 52779, 57491, 57806, 57807

Proposed Rules:

17...52796, 54018
20...53391
28...56575
29...56575
Ch. II...51426
216...57854
217...58443
223...58895
224...58895
229...54019
Ch. III...51426
300...55408
Ch. IV...51426
Ch. V...51426
Ch. VI...51426
622...53109, 58466
635...51165, 59167
648...54533, 55166
679...50436, 50444, 52394, 55408

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 4, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.